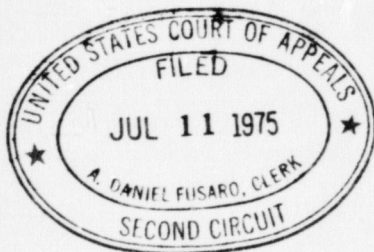


***United States Court of Appeals
for the Second Circuit***



APPENDIX



75-2051

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Number 75-2051

UNITED STATES OF AMERICA,
Respondent,

—against—

JOHN FRANZESE,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DEFENDANT-APPELLANT'S APPENDIX

LYON & ERLBAUM
Attorneys for Defendant-Appellant
John Franzese
Office and P.O. Address
123-60 83rd Avenue
Kew Gardens, N.Y. 11415
(212) 263-3235

On the Brief:

HERBERT A. LYON
WILLIAM M. ERLBAUM
CHARLES WENDER

B
P/S

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS TO APPENDIX

	<u>PAGE</u>
Docket Entries-----	A-1-3
Notice of Motion on Behalf of John "Sonny" Franzese----- Dated October 23, 1974	A-4-19
Memorandum of Law on behalf of Appellant----- Dated October 23, 1974	A-20-24
Notice of Motion on behalf of Nicholas Potere----- Dated December 10, 1974	A-25-40
Government's Reply Memorandum of Law-----	A-42-48
Memorandum of Law on behalf of John "Sonny" Franzese---- Dated January 16, 1975	A-49-62
Affidavit of Carmine J. Pepe----- Dated December 23, 1974	A-63-64
Affidavit of Irwin Blye----- Dated January 15, 1975	A-65
Affidavit of Eleanor Cordero----- Dated January 15, 1975	A-66-68
Affidavit of Stephanie Cordero----- Dated January 15, 1975	A-69
Affidavit of Thomas R. Pattison, Assistant United States Attorney - Dated March __, 1975-----	A-70-77
Affidavit of Danny O. Coulson, Special Agent of the Federal Bureau of Investigation - Dated March __, 1975-----	A-73
F.B.I. Report by Danny O. Coulson and T. Barry Goas----- Dated October 1, 1971	A-79-82
F.B.I. Report by Joseph Tangel and John J. Starno----- Dated August 13, 1965	A-85-85a
F.B.I. Report by Arthur D. Keefe, Jr.----- Dated August 13, 1965	A-86-87
Affidavit of Michael J. Gillen----- Dated February 28, 1975	A-88-89

TABLE OF CONTENTS TO APPENDIX (Cont'd.)

	<u>PAGE</u>
Letter to Hon. Jacob Mishler from Herbert A. Lyon, Esq., Dated March 10, 1975-----	A-91
Affidavit of Eleanor Cordero----- Dated March 10, 1975	A-92-93
Memorandum of Decision and Order----- Dated March 12, 1975	A-94-103
Judgment----- Dated March 14, 1975	A-104

644 1 0 U.S.A. vs. JOHN FRANZESE, ETC., & ORS.

DATE	FILED PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
11-6-74	NOTICE OF MOTION FILED for an order pursuant to Title 28, U.S.C. Sec. 2255, setting aside the judgment of conviction rendered April 17, 1967, convicting the defendant :John "Sonny" Franzese of certain violations, etc. (returnable Nov. 15, 1974)	1
11-6-74	Memorandum of Law filed.	2
11-15-74	Before MISHLER, CH. J. Case called. Motion argued and adjourned WITHOUT DATE:.	
12-13-74	Government's Memorandum of Law filed.	3
12-13-74	Notice of motion filed for an order pursuant to 28 U.S.C. Sec. 2255 1. Setting aside the judgment of conviction rendered herein on April 17, 1967, convicting the defendant Nicholas Potere of violations of 18 U.S.C. Secs. 2,371,2113(c) and (d) etc.	4
1-17-75	MEMORANDUM OF LAW FILED with Supporting affidavits on behalf of movant, John "SONNY" FRANZESE	5
1-31-75	Copy of letter of Thomas R. Pattison, Assistant U.S. Atty., Deputy Chief, Federal Crimes Section filed, dated Jan. 29, 1975, etc. addressed to MISHLER, CH. J.	6
1-31-75	Copy of letter of MISHLER, CH. J., filed dated Jan. 30, 1975 addressed to U.S. Atty., Federal Bldg., Bklyn., N.Y.	7
3-4-75	Affidavit of MICHAEL J. GILLEN, Esq., formerly an Assistant U.S. Atty., E.D.N.Y., filed.	8
3-4-75	Affidavit of DANNY O. COULSON, Special Agent of the Federal Bureau of Investigation filed.	9
3-4-75	Affidavit of Thomas R. Pattison, Assistant U.S. Atty., E.D.N.Y., filed.	10
3-12-75	BY MISHLER, CH. J. MEMORANDUM of Decision and Order filed. The motion to vacate the judgment of conviction pursuant to 28 U.S.C. Sec. 2255 is in all respects DENIED and it is SO ORDERED. (See Memo., etc.)	11
3-14-75	BY THE CLERK: JUDGMENT FILED. ORDERED and ADJUDGED that the defendant petitioners take nothing and the motion to vacate the judgment is DENIED.	12
3-18-75	NOTICE OF APPEAL FILED (from order of March 12, 1975) Proof of Service upon the U.S. Atty., made.	13
3-18-75	Copy of Notice of Appeal was on this day mailed to Clerk, U.S. C.A. <i>W. J. W.</i>	
3-8-75	Forms C & D together with instructions re record on appeal were on this day handed personally to a representative of LYON & ERLBAUM, ESQS.	

DATE	FILED FOR ENTRY	AMOUNT REPORTED IN EMULMENT RETURN
3-20-75	NOTICE OF APPEAL FILED. (NICHOLAS C. POTERE)	14
3-20-75	Copy of Notice of Appeal was on this day mailed to U.S. Atty., E.D.N.Y. <i>Arch</i>	
3-20-75	Copy of Notice of Appeal was on th. day mailed to Clerk, U.S.C.A. <i>Arch</i>	
4-24-75	BY MISHLER, CH. J. ORDER FILED allowing proceeding to be prosecuted without prepayment of fees or costs or security, etc.	15
4-24-75	Letter of MISHLER, CH. J., dated April 21, 1975 to Nicholas Potere, together with FINANCIAL AFFIDAVIT (attached)	16 & 17
4-24-75	Letter of Nicholas Potere filed addressed to MISHLER, CH.J. re financial statement, etc.	18
5-8-75	All documents together with a certified copy of Docket Entries were on this day transmitted to Clerk, U.S.C.A. <i>Arch</i>	
5-19-75	Copy of Index filed with acknowledgment endorsed thereon re documents received by Clerk, U.S.C.A.	19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

74C 1575

UNITED STATES OF AMERICA,

- against -

NOTICE OF MOTION

66 Cr 161
[JM]

JOHN FRANZESE, also known as "Sonny"
WILLIAM DAVID CRABBE, also known as "Red",
JOHN MATERA, also known as "Johnny Irish",
NICHOLAS POTURE and JOSEPH M. FLORIO, also
known as "Whitey",

Defendants.

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Eleanor Cordero, duly sworn to on the 19th day of October, 1974, and the affidavit of Herbert A. Lyon, duly sworn to on the 23rd day of October, 1974, a motion will be made before this Court, located at 225 Cadman Plaza East, Brooklyn, New York, on the 15th day of November, 1974, or as soon thereafter as counsel may be heard, for an order pursuant to Title 28 of the United States Code, Section 2255, setting aside the judgment of conviction rendered April 17, 1967, convicting the defendant, JOHN "Sonny" FRANZESE, of violations of Title 18 U.S.C. 2113(d) and 2, and Title 18 U.S.C. 2113(c) and 2, and Title 18 U.S.C. 371 and 2; and for a further order dismissing the indictment herein, or in the alternative granting a new trial, on the grounds that the testimony of the main Government witnesses was false and perjurious and of such material nature as to be the main basis of such verdict, and that such perjured testimony was or may have been procured, induced or compelled by promises of leniency by Government attorneys or their agents.

Dated: Kew Gardens, New York
October 23, 1974

TO: HON. DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Yours, etc.,
LYON & ERLBAUM
Office & P.O. Address
123-60 83rd Avenue
Kew Gardens, New York 11415
(212) 263-3235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

66 Cr 161
[JM]

JOHN FRANZESE, also known as "Sonny",
WILLIAM DAVID CRABBE, also known as "Red",
JOHN MATEFA, also known as "Johnny Irish",
NICHOLAS POTURE and JOSEPH M. FLORIO, also
known as "Whitey",

Defendants.

STATE OF NEW YORK)
) ss. :
COUNTY OF QUEENS)

HERBERT A. LYON, being first duly sworn, deposes and says:

I am attorney duly admitted to practice before the Courts of the State of
New York.

I have read the annexed Affidavit of Eleanor Cordero.

I am familiar with the testimony of John Cordero, the husband of Eleanor
Cordero, a main prosecution witness in the trial of JOHN "Sonny" FRANZESE under indict-
ment 66 Cr 161, charging the defendant, JOHN "Sonny" FRANZESE with violations of Title
18 of the United States Code, Sections 2113(a), 2113(c), 2113(d), 2 and 371.

The affidavit of Eleanor Cordero conflicts with the testimony of John Cordero
in several material instances. A number of such instances are set forth in the follow-
ing paragraphs:

1. On pages 1781 to 1787 of the trial transcript, John Cordero testified
that a meeting took place at the Aqueduct Motor Inn on a date somewhere between July 19,

1965 and July 22, 1965. Present at that meeting, according to Mr. Cordero's testimony at the trial, were himself, Richard Parks, James Smith, and the defendant, JOHN "Sonny" FRANZESE. Several other parties were also present at that meeting who were named co-defendants in the trial in which John Cordero testified. Mrs. Cordero's affidavit indicates that such a meeting was impossible. The aforesaid affidavit indicates that on the dates in question, July 19 to July 22, 1965, James Smith and Richard Parks and John Cordero were not in New York City. Specifically, Mrs. Cordero's affidavit states that Richard Parks and James Smith were in Puerto Rico from July 15, 1965, onward until at least July 19, 1965, and some time afterward, and that before they returned John Cordero and Eleanor Cordero, the affiant, had departed from New York City and gone to Baltimore, Maryland, where she and John Cordero remained for four or five days, thus rendering such a meeting impossible (a copy of Smith's postcard is attached as Exhibit #1).

2. On pages 1802 and 1803 of the trial transcript of the testimony of John Cordero, he testified that he and Nick Poture did the casing for the robbery of the bank in Kew Gardens. Mrs. Cordero's affidavit states that no one participated in that robbery but herself, John Cordero, Richard Parks and James Smith. By participation, she indicates the casing, the set-up, the actual robbery, getaway and split.

3. On page 1806 of the trial transcript of the testimony of John Cordero, he testified as to casing the bank in Oceanside with Nick Poture and James Smith. Mrs. Cordero's affidavit indicates that she and John Cordero and Richard Parks and James Smith, and no other persons participated in the robbery of the Oceanside bank.

4. On pages 1809, et seq., and again at pages 2064, et seq., of the trial testimony of John Cordero, he testified that the driver of the Kew Gardens robbery was Ann Massineo, also known as Annie the Singer. Mrs. Cordero's affidavit indicated that such a statement was false. She, not Ann Massineo, was the driver of the getaway vehicle from the Kew Gardens robbery. Her affidavit indicates the reasons that the name Ann Massineo was used was to divert suspicion from Eleanor Cordero, who had been arrested and charged with that robbery.

5. In addition, on page 1811 of the trial testimony of John Cordero, he testified that Richard Parks' personal car was used as the switch car in the robbery. Mrs. Cordero's affidavit shows that the car owned by Eleanor Cordero was used for the switch car and not the car owned by Richard Parks.

6. On page 1813 of the trial testimony of John Cordero, he testified as to a split that took place after the Oceanside robbery. John Cordero's testimony indicated that Ann Massineo took part in the split discussion with Nick Poture, Whitey Florio and Tony Polisi present. Eleanor Cordero's affidavit indicates that none of these parties took part in the split. Eleanor Cordero's affidavit further states that none of these parties participated in the actual robbery, the split, or the planning, or any other aspect of the robbery. The argument described by John Cordero, in his testimony regarding the Oceanside split, really involved Eleanor Cordero. The argument, according to the affidavit of Eleanor Cordero, was over the participation of Eleanor in the split as the driver because of her personal relationship with John Cordero, who was another participant in the robbery. In addition,

with regard to the aforesaid split, John Cordero indicated in his trial testimony that JOHN "Sonny" FRANZESE received a share of the split. Eleanor Cordero's affidavit indicates that no one outside of the actual participants in the robbery received any share of the split of any robbery.

7. On page 1864 of the trial testimony of John Cordero, he testified that the driver of the getaway and switch cars in that robbery was Ann Massineo, and that Richard Parks' car was used as the switch car. Eleanor Cordero's affidavit indicates that she, and not Ann Massineo, was the driver of the getaway car and the switch car in the robbery of the Oceanside bank on August 13, 1965, and that her personal car was used as the switch car in that robbery and not the personal car of Richard Parks.

8. On pages 1872, et seq., of the trial testimony of John Cordero, Mr. Cordero testifies that the car used in the Oceanside robbery was allegedly stolen from outside, in the immediate vicinity of the Kew Motor Inn. He further testified as to a discussion regarding the theft of that automobile with a number of the other alleged conspirators. According to the affidavit of Eleanor Cordero, that car was in fact stolen from the parking lot of the Tavern on the Green in Central Park and not from in front of the Kew Motor Inn.

9. On pages 1884, et seq., of the trial testimony of John Cordero, Mr. Cordero testified that the travelers cheques that were the proceeds of the robbery of the Oceanside bank on August 13, 1965, were dropped off at a bar in Yonkers, at the direction of JOHN "Sonny" FRANZESE so that they could be disposed of by a fence.

Eleanor Cordero's affidavit indicates that the sole purpose of leaving the travelers cheques in the bar in the Cross County Shopping Center was to divert suspicion from Eleanor and John Cordero, James Smith and Richard Parks. The manner in which this was to be done was to leave them far from Long Island and Kew Gardens, and the Aqueduct, where everybody hung out.

While there are many other material discrepancies and contradictions between the trial testimony of John Cordero and the annexed affidavit of Eleanor Cordero, these are some of the more glaring. Each of the above is a material discrepancy and each of them relates to the basis of the conviction of JOHN "Sonny" FRANZESE.

The testimony of John Cordero, a main prosecution witness, is in direct contradiction with the annexed affidavit of Eleanor Cordero. These conflicts and contradictions bring into direct question whether John Cordero and other prosecution witnesses perjured themselves to receive favorable treatment on their own sentences from the Government on those bank robberies that they had already pleaded guilty to, and whether such testimony was procured wittingly by the promises of favorable treatment made by Government attorneys or their agents.

In addition, it would appear that the Government attorneys and/or their agents knew, or should have known, that John Cordero had lied in some significant instances during his testimony on the trial of the "United States v. John "Sonny" Franzese", specifically with regard to the involvement of Eleanor Cordero as the driver of the car in the Kew Gardens robbery. The informant further identified the automobile owned by Mrs. Cordero as having been used in the robbery. John Cordero testified on the trial that the driver was Ann Massineo and not Eleanor Cordero,

and that the automobile used in the robbery of the Kew Gardens bank was not the Cordero's automobile, nor was the auto used in the Oceanside bank robbery. However, defense counsel called FBI agent Murphy to the stand during the trial, in a hearing conducted outside of the presence of the jury. This was done because of an FBI report that was provided to defense counsel as part of the "3500 material" that indicated that the agent had been told by a reliable informant that Eleanor Cordero had driven the getaway car. The name of the informant was never given to the defense, although requested. Thus, the government had information that showed that John Cordero was lying when he stated that Ann Massineo was the driver of the getaway car and that he was merely covering up for his wife. It is interesting to note, upon information and belief, that Ann Massineo was indicted but her case was severed and she was never prosecuted.

There has been no prior application for this relief, and the reason that this application is brought at this time, is that Eleanor Cordero did not come forward until October 19, 1974, the date of her affidavit, and was previously unavailable to, and hostile to, JOHN "Sonny" FRANZESE, and further, was a potential government witness and, according to her affidavit, met an important government witness, her husband, John Cordero, on several occasions, in the office of the Assistant United States Attorney. John Cordero was at that time confined. Such meetings could have only taken place with the concurrence and approval of the Assistant United States Attorney handling the prosecution.


WHEREFORE, your deponent prays for an order pursuant to Title 28 of the United States Code, Section 2255, setting aside the conviction in this matter and dismissing the indictment herein on the grounds that it was based on wilful and

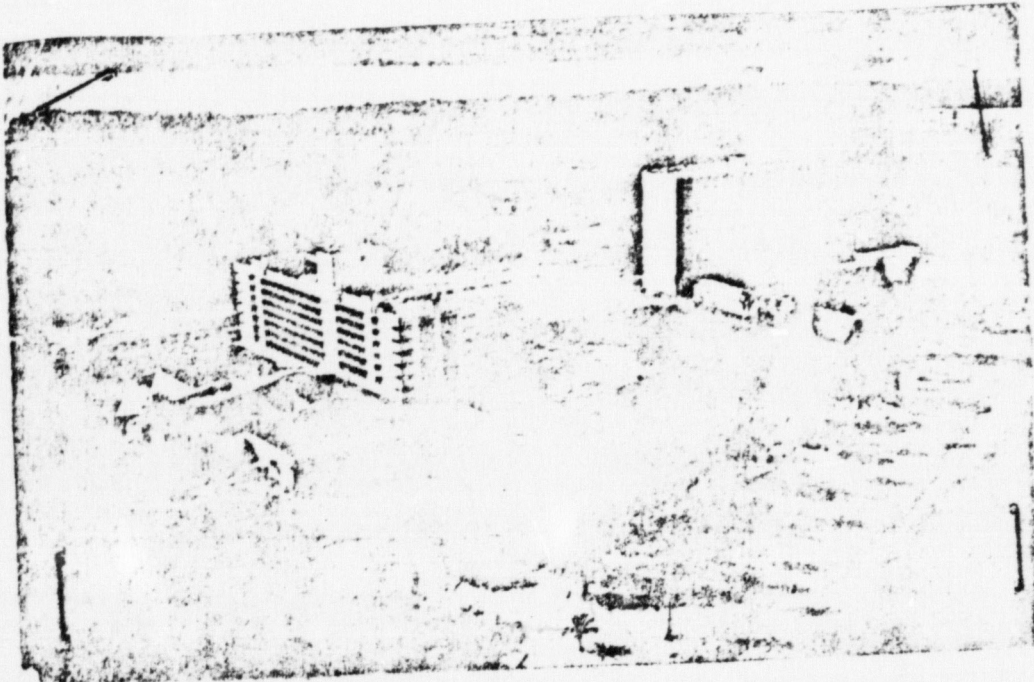
A-11

knowing use of perjured testimony, or in the alternative granting a new trial.

Subscribed and sworn to this

23rd day of October, 1974


HERBERT A. LYON



THE INTERCONTINENTAL HOTEL and
THE AMERICANA HOTEL
at Isla Verde, San Juan, Puerto Rico

Color by Toulon



Hello, El, having a
 beautiful time down
 here, I could stay here
 for ever, how is my boy
 John doing, ok I bet. he
 sure is missing the action
 me and Richie are staying
 at the Hotel Americana
 we didn't care for the other
 place, had a little luck
 on the Roulette wheels, give
 the girls a kiss for me.

Love
 Muttie



POST CARD

Address

Eleanor Crisci
 185 Atlantic Ave.
 Apt B 2
 Lynbrook, L. I.

64725

EXHIBIT 1

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

ELEANOR CORDERO, being first duly sworn, deposes and says:

I first met John Cordero in late June of 1965. I met him in the Luau Club in Richmond Hill, Queens, where I worked as a waitress. At that time, he told me, or gave me the impression, that the source of his income was his ownership of a carwash.

Subsequently, John and I became intimate and were later married. The first indication that I had that he was robbing banks was in early July of 1965. On that occasion, he came into a motel room where we were staying and dumped a large amount of cash on the bed.

I met James Smith, also known as Smitty, also known as Jim Ryan, and Richard Parks, at the Luau and various locations in Queens, and knew them quite well. Along with John and Charles Zaher (whom I knew as "Blackie"), they were committing bank robberies. They had been committing robberies before John Cordero was released from prison.

On or about July 14, 1965, Richie Parks and Jim Smith went to Puerto Rico. They travelled under assumed names. Richie Parks went as either Richard Gerard or Robert Gerard. Jim Smith went as James Ryan. John Cordero and myself drove them to the airport. Prior to driving them, we rented two rooms at the Kew Motor Inn. Subsequent to driving them, John and myself stayed the night at the Kew.

92

In the latter part of July, 1965, I received a post card from Smitty, from Puerto Rico, postmarked July 19, 1965. After that, but before Smitty returned, John, myself, and my two daughters went to Baltimore, Maryland, where John wanted to "case" some banks for possible robberies. In Baltimore, Maryland, we stayed at the Holiday Inn and used the name Capone. We didn't find any suitable ones and returned four or five days later.

On/ or about July 30, 1965, we robbed the Kew Gardens Branch of United Savings and Loan Association, 75-21 Main Street. I was the driver of the get-away car, which was a stolen car that had been stolen in the Bronx by Richie Parks. After the robbery, I drove the get-away car to where I had parked my own personal car on the street, four or five blocks away. After the robbery we split up, I got in my car with John, who was carrying the money, Richie and Smitty drove off in the stolen car, and we went to Richie's apartment where we split the money up. There was no share withheld for anyone else. There was an argument over my share of the proceeds because I was John's woman, but I got an equal split.

Subsequently, John and I decided to get married. We set the date for August 13, 1965. That was also the date that we robbed the bank in Ocean-side. I also drove the car for that robbery and that car had been stolen from the Tavern on the Green in Central Park. My personal car was left in the street with my daughter Stephanie in it. I drove the stolen car to the bank and back to my car after the robbery. Later that day, John and I were married at the courthouse on Sutphin Boulevard in Queens.

We split the proceeds. Again there was no cut held out for anyone who hadn't been in the robbery. Again there was an argument as to the share I was to get, since I was John's wife. I got an equal split but as a result of this, I didn't drive in any subsequent robberies. I was only driving because the original driver for the robberies backed out and I was an emergency substitute.

Anne Massineo never participated in either of these robberies. Her name was used after the story about Tony Polisi was concocted to:

- (1) divert the authorities from me;
- (2) because she could be connected to Tony Polisi.

In early September of 1965, John and I met Richie, Smitty and Carol in the Howard Johnson Motel in Chicopee, Massachusetts. John, Richie and Smitty then robbed the bank in Holyoke, Massachusetts. I picked John up after the robbery, but Richie was the "driver" because of the argument over the split. Sal Polisi didn't participate in the robbery. No one shared in the split but Richie, John and Smitty. We then drove home.

In the middle of September, 1965, John, Smitty and Richie decided to rob some banks out west, because New York was too hot. First we went to Denver, Colorado. Carol Salzo was with us. We rented rooms and we rented cars under assumed names. The boys had no idea what bank they would rob. They went out and cased a number of them. They returned to the motel and the next morning they robbed the bank. They got \$300.00. We left Denver the next day and went to Salt Lake City, Utah. We again rented rooms and cars.

Again the boys had no idea what bank they would rob. They went out and cased a few and found one that they liked. It was in a shopping center. They robbed it and got \$33,000.00. I picked John up after the robbery but again Richie drove. The money was split three ways with no share held out for anyone who hadn't been in the robbery. John and I went to Las Vegas, where we gambled for a few days.

Subsequently, we returned to New York and our home in Bethel, Connecticut.

On October 1, 1965, at our home in Bethel, John and I were arrested by F.B.I. agents. We were taken before a United States Commissioner and waived extradition. John was taken to West Street. I went to a hospital because I was pregnant and having complications. John was arraigned and \$50,000.00 bail was set. I was arraigned and released because John was cooperating and told them I wasn't involved. I was never indicted for these crimes but Anne Massineo was in my place. She was indicted but her case was severed and I don't know the disposition of her case.

During the months following our arrest, from October 1965 to January 1966, I met with John on a number of occasions at West Street and at Mr. Gillen's office. It was during this time that he told me that he, Richie, Smitty and Blackie concocted a story to involve the Polisis as the masterminds of the robberies (Ann Massineo was substituted for me to give further credence to their story, since she was associated with the Aqueduct). Their sole purpose in this was to secure consideration on sentence. The only persons really involved were

myself, John, Richie, Smitty and Carol Salzo. Tony Polisi owned the Aqueduct Motel and hung around with Richie, Smitty and John, because they always had a lot of cash. To my knowledge, he was not in on the planning, nor did he receive any share of the proceeds of the robberies.

Sometime during the Polisi trial in January 1966, I think it was on the 24th, John told me that he, Richie, Smitty and Blackie had found out that they would only receive consideration from the Government to the extent that they would get only twenty-five years and not the one hundred twenty-five which they faced. This was when they devised the scheme to implicate John "Sonny" Franzese. He was selected because he was supposed to have the "territory" where the Aqueduct was located, and because he was supposed to be a big man. The sole purpose of implicating him was to receive further consideration from the Government at the time of sentence. At no time during the time that I knew John Cordero did I ever meet "Sonny" Franzese, nor did John Cordero ever mention his name in connection with these robberies. There were no floor plans used in these robberies. The escape routes were devised in advance by Richie Parks and the cars that were stolen here and the stolen cars used in the robberies in the instances that I know about, as related before, were stolen by Richie Parks. No outside party, as far as I know, ever provided stolen cars for John, Smitty and Richie to use in their robberies. John Smitty and Richie selected the banks at random and without forethought. They did their own "casing" and "splitting". A number of incidents stick out in my mind:

- (1) Before the Kew Gardens robbery, I was sent in to "case" the bank. My pretense was to go in with a \$10.00

bill and get a roll of quarters.

(2) Prior to the Salt Lake City, Utah robbery, John and I approached a policeman and said I had lost my pocketbook. We then were told where the police station was and how to get there. In this way, we were able to judge the necessary get-away time and route.

(3) After the Oceanside robbery, we decided to, and started to, destroy the traveler's cheques since they were numbered and "hot". Then we decided to dispose of them in a manner which would "cool off" Kew Gardens, since the boys occasionally used the Kew Motor Inn, and, in addition, frequented the lounge there. We decided to take the cheques and leave them far from Kew Gardens or Long Island. We went to Yonkers, to the Cross County Shopping Center, to a bar known as "Wilsker's". Richie went in first and remained in the bar. John and I entered later and took a table and we pretended we didn't know Richie and he pretended he didn't know us. John and I left the cheques on the floor, in an attache case, at the table where we were sitting, and then we went out. Richie stayed at the bar and watched to make sure the cheques were found. After Richie saw the checks were found, he left and met us at the furthest end of the shopping center. Richie got in his car and left, and John and I got in our car and went home.

(4) The stolen car, used in the Oceanside robbery, was stolen from the Tavern on the Green in Central Park, two nights before the robbery, by Richie, in my presence.

To my knowledge, all the testimony involving John "Sonny" Franzese and implicating him in a conspiracy to commit the above-mentioned bank robberies, is false.

He did not aid in the planning or execution of any of them, nor did he share in the proceeds. This story was devised by John Cordero, James Smith, Richard Parks and Charles Zaher, to secure favorable treatment from the Government on their sentencing for the bank robberies that they planned, committed and pleaded guilty to.

Sworn to before me this
19th day of October, 1974.

Eleanor Cordero
ELEANOR CORDERO

Robert A. Lyon
ROBERT A. LYON
Notary Public, State of New York
NY 27-1-1000
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

740 1575

UNITED STATES OF AMERICA

MEMORANDUM OF LAW

- against -

66 Cr 161
[JM]

JOHN FRANZESE, also known as "Sonny",
WILLIAM DAVID CRABBE, also known as "Red",
JOHN MATERA, also known as "Johnny Irish",
NICHOLAS POTURE and JOSEPH M. FLORIO, also
known as "Whitey",

Defendants.

This Memorandum of Law is submitted in support of defendant's
motion, pursuant to Title 28 United States Code 2255.

LYON & ERLBAUM
Attorneys for Defendant FRANZESE
Office & P.O. Address
123-60 83rd Avenue
Kew Gardens, New York 11415
(212) 263-3235

The defendant, JOHN "Sonny" FRANZESE, was convicted after a trial of various violations of Title 18 United States Code 2113, 2 and 371. He was, according to the testimony of the main prosecution witnesses, the "Brain" of a ring of bank robbers; he supplied the plans, cars and weapons necessary for the actual robbers to complete their task. In return, he received a share of the proceeds. The main prosecution witnesses were the active participants in the robbery scheme - John Cordero, James Smith, Richard Parks and Charles "Blackie" Zaher. Eleanor Cordero (affidavit annexed) was the wife of John Cordero. She was arrested with the other four participants named above but never prosecuted.

On April 17, 1967, the defendant, JOHN "Sonny" FRANZESE, was sentenced to a total of fifty (50) years for his alleged involvement in the robbery scheme. Smith, Parks, Cordero and Zaher were given "slaps on the wrist" in return for their testimony. Eleanor Cordero was never called as a witness in the trial, although well within the clutch of the prosecution and effectively out of the reach of the defense attorney.

Title 28 of the United States Code 2255 states in part:

"Unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief, the Court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto."

The defendant moves this court for an order vacating its former judgment and dismissing the indictment or in the alternative granting a new trial on the grounds that the prosecution knowingly and intentionally used perjured testimony at the trial that lead to the conviction of the defendant herein. The affidavit of Eleanor Cordero clearly raises questions of fact that require exploration at a hearing. James v. United States, 175 F.2d 769, (5th Cir. 1949), United States v. Rutkin, 212 F.2d 641 (3rd Cir., 1952).

Eleanor Cordero was the wife of one of the main prosecution witnesses at the trial of JOHN "Sonny" FRANZESE, and unavailable to the prosecution, who never called her as a witness. Thus, the cautionary wording of Green v. United States, 256 F.2d (1st Cir.), cert. den. 358 U.S. 854, 79 S. Ct. 83, 3 L. Ed. 2d 67 (1958), and Saville v. United States, 451 F.2d 659, do not apply. Mrs. Cordero was clearly not available in the sense that Green and Saville speak of, to wit, the withholding of a witness at the time of trial, by the defense, gambling for an acquittal, to use them later on at some post-conviction tribunal. Green, supra, at 484.

Thus, since she was not available to the defense at trial, the jury had no opportunity to evaluate her testimony and credibility, so no matter how able, experienced and effective defense counsel was, or may have been, he still would not have been able to expose the perjury of John Cordero, James Smith, Richard Parks, and Charles "Blackie" Zaher, no matter how much he might suspect it. United States v. Sanders, 92 F.Supp. 447 (D.C. Md. 1950), aff'd. 183 F.2d 748 (4th Cir., 1950).

Furthermore, the perjury testimony was, in fact, the only and sole basis for the conviction of JOHN "Sonny" FRANZESE. This was perjury specifically aimed at securing his conviction, not directed at a co-defendant, as in Weaver v. United States, 263 F.2d 577 (8th Cir., 1959), or United States v. Weatherbee, 175 U.S. 834 (2d Cir., 1949).

Finally, but most importantly, we must view what happened to the various parties in this drama. JOHN "Sonny" FRANZESE received a sentence of fifty (50) years for his alleged participation in this "scheme". His participation, assuming arguendo that everything that Parks, Cordero, Smith and Zaher said was true, was limited to sharing the proceeds of the robberies and planning them. Cordero, Smith and Parks, who carried loaded, drawn firearms while they perpetrated these crimes, walk the streets today, because of the perjured testimony that they rendered. Such factors should be taken into account when allegations of perjury are made. These were alleged accomplices of the defendant, JOHN "Sonny" FRANZESE, and, as such, their testimony should be viewed with suspicion. In view of this traditional mistrust, many jurisdictions, including New York State, have requirements that the testimony of an accomplice be corroborated by independent evidence before a conviction will be allowed to stand (N.Y. Crim. Proc. Law, Section 60.22).

Eleanor Cordero's affidavit clearly shows that the testimony of John Cordero, Richard Parks, James Smith and Charles "Blackie" Zaher was perjurious as to material facts allegedly establishing the guilt of the defendant in the above-captioned matter. Without such perjured testimony, there would have been an absence of sufficient proof to justify a guilty verdict.

It is most strongly urged that a hearing be held pursuant to the provisions of Title 28 of the United States Code 2255 for a swift determination of the allegations raised by the affidavit of Eleanor Cordero of knowing use of perjured testimony by the prosecution in the trial of JOHN "Sonny" FRANZESE, and for a further order vacating the judgment of conviction rendered on April 17, 1967, and dismissing the indictment herein, or in the alternative granting a new trial.

Dated: Kew Gardens, New York
October 23, 1974

Respectfully submitted,
LYON & ERLBAUM
Attorneys for Defendant FRANZESE
Office & P. O. Address
123-60 83rd Avenue
Kew Gardens, New York 11415
(212) 263-3235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

: Docket No. 74 C 1575
[66 Cr 161 JM]

-against-

: NOTICE OF MOTION IN
: BEHALF OF DEFENDANT
: NICHOLAS POTERE

JOHN FRANZESE, et al,

Defendants.

:

-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of HENRY J. BOITEL, dated December 10, 1974, the defendant NICHOLAS POTERE hereby joins in the pending motion of the co-defendant John Franzese, for an Order, pursuant to 28 U.S.C. § 2255:

1. Setting aside the judgment of conviction rendered herein on April 17, 1967, convicting the defendant Nicholas Potere of violations of 18 U.S.C. §§ 2, 371, 2113(c) & (d); and

2. Dismissing the indictment herein, or, in the alternative;

3. Granting a new trial; and

4. For such other and further relief as to the Court may seem just and proper.

Upon the ground that the conviction herein was secured by

means of false and perjurious testimony, and upon such further and additional grounds as may be established at an evidentiary hearing with regard to the truth of the allegations of Eleanor Cordero.

New York, New York
December 10, 1974

Yours, etc.,

HENRY J. BOITEL
Attorney for Defendant
Nicholas Potere
233 Broadway
New York, New York 10007
(212) 732-8104

TO: Clerk
United States District Court
Eastern District of New York

David G. Trager
United States Attorney
Eastern District of New York

Lyon & Erlbaum, Esqs.
Attorneys for Defendant Franzese
123-60 83rd Avenue
Kew Gardens, New York 11415

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Docket No. 74 C 1575
-against-	:	[66 Cr 161 JM]
JOHN FRANZESE, et al,	:	AFFIDAVIT IN SUPPORT OF
	:	MOTION IN BEHALF OF DE-
Defendants.	:	<u>FENDANT NICHOLAS POTERE</u>

-----X

HENRY J. BOITEL, being an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury, pursuant to Rule 2106 CPLR:

1. I am the attorney, for the purposes of this motion, for NICHOLAS POTERE, one of the defendants convicted herein. I was not associated with the trial of the instant case; however, I have a familiarity with the facts of this case. As an associate of the firm of Sabbatino & Todarelli, Esqs., I assisted in the representation of Mr. Potere with regard to the filing of a petition for a writ of certiorari to review the judgment of conviction herein, and with regard to a subsequent effort by Mr. Potere for a reduction of sentence. Similarly, as an associate of the firm of Sabbatino & Todarelli, Esqs., I prepared the appellate brief which led to the reversal of the conviction in the related case of United States v. Polisi, 416 F. 2d 573 (2nd Cir. 1969).

2. The Status of the Defendant Potere - In April, 1966, a Federal Grand Jury in the Eastern District of New York charged Potere and his co-defendants (Franzese, Crabbe, Matera and Florio) in an eight count indictment. Six of the eight counts related to two separate bank robberies. The first occurred on July 30, 1965, in Queens County, and the second occurred on August 13, 1965, in Nassau County. The seventh count charged that the defendants, on September 15, 1965, received the proceeds of a bank robbery which had been committed in Salt Lake City, Utah. The eighth count charged the defendants with conspiracy to rob Federally insured banks. Potere was convicted under Counts 2 and 4 (placing the lives in jeopardy during the robbery of Federally insured banks - 18 U.S.C. § 2113[d]), Count 7 (receiving property stolen from a Federally insured bank - 18 U.S.C. §§ 2113[c] and [d]), and Count 8 (conspiracy to rob Federally insured banks - 18 U.S.C. §§ 371 and 2). Potere was sentenced to concurrent terms of imprisonment of fifteen years on each of Counts 2 and 4, and to additionally concurrent terms of imprisonment of ten years and five years as to Counts 7 and 8, respectively. The conviction was affirmed, sub nom. United States v. Franzese, 392 F. 2d 954 (2nd Cir. 1968), cert. denied, sub nom. Giordano v. United States, 394 U.S. 310 (1969). Potere surrendered to commence serving his sentence on August 25, 1969.* On or about

* During the pendency of the prosecution, Potere accumulated approximately six weeks of jail time while attempting to meet bail requirements.

November 20, 1973, he was released on parole. He continues to be on parole as of the filing of the instant motion, and will remain on parole until the year 1984. It is clear that parole is a restraint upon liberty which confers upon a parolee the standing to raise a claim under the Federal habeas corpus jurisdiction, Jones v. Cunningham, 371 U.S. 236 (1963).

3. The Trial Evidence Concerning Anne Messineo and Eleanor Cordero - As this Court is aware, the four government bank robber witnesses - Smith, Cordero, Parks and Zaher - testified to a series of events commencing with the alleged formation of a bank robbery ring by Anthony Polisi in March, 1965, and the alleged takeover of that ring by the defendants in the instant case in mid-July, 1965.

According to Smith, a week or so after the takeover meeting, another meeting was held in Anthony Polisi's office at the Aqueduct Motor Inn, attended by Smith, Cordero, Parks, Florio, Potere and Anthony Polisi (92).^{*} During the course of that meeting, Potere allegedly produced sketches of various banks and "getaway routes" (92, 95, 196, 1798-1799). During this same meeting, Polisi allegedly suggested - and the others concurred - that one Anne Messineo be used as the getaway driver in the next bank robbery (96-7).

^{*}It is particularly noteworthy that Cordero's version of this same meeting is that it took place in a Queens apartment belonging to Potere and that the meeting was presided over by Franzese (1793-1799); see also Parks' testimony at 2377-2378).

About two days prior to the July 30, 1965 robbery of the County Federal Savings and Loan Association of Queens, a meeting was allegedly attended by the four bank robber witnesses, together with Florio, Potere and Anthony Polisi in Polisi's office at the Motor Inn (107, 1808, 2384). Potere allegedly produced sketches of the bank (108). That night, Parks allegedly introduced Anne Messineo to the other gunmen in the bar at the Aqueduct Motor Inn, and later in the evening, Florio, Cordero, Parks and Anne Messineo allegedly drove "over to the bank" to examine "the getaway area" (1809, 2386).

On the morning of the County Federal robbery, Smith, Parks and Cordero allegedly started out from the Aqueduct Motor Inn armed with loaded pistols received from Anthony Polisi (110; cf. 1810-1811; 2387). By prior arrangement, the three gunmen allegedly met Anne Messineo outside the Aqueduct Motor Inn and proceeded in two automobiles to the area of the County Federal Bank (2387 et seq.; 1811). One of the vehicles, a Ford owned by Parks, was secreted some distance from the bank to be used as a "switch" car (1811, 2387). Another automobile, which had been previously stolen for the occasion, was allegedly used by Messineo and the three gunmen to go to and from the bank (Ibid). Allegedly leaving Anne Messineo in the getaway car, Cordero "covered" the front door of the bank; Parks held the tellers at gunpoint, and

Smith jumped over the counter emptying cash from the clerks' drawers (119; 1811-1812, 2388-2389). Messineo drove the escaping gunmen to Parks' "switch car" and the three bandits drove back to the Aqueduct Motor Inn with their loot (120, 1812-1813, 2389). There in the presence of Anthony Polisi, Florio and Potere, the trio allegedly divided up some \$12,000 or \$ 13,000 (123, 1813, 2389). Approximately half of the proceeds went to Smith, Parks, Cordero and Anne Messineo, with the remainder allegedly going to the Franzese group (1813, 1820-1824). The division was allegedly directed by Potere, and the gunmen allegedly objected to paying Messineo out of their own share (2389; cf. 1813, 125).

Approximately one week after the County Federal robbery, Smith and Parks allegedly met with Franzese and Florio at the Kew Motor Inn. According to Smith, Franzese wanted to know "how come we didn't get the vault" on the County Federal robbery (128). Smith allegedly explained that they had become panicky while inside the bank because "Annie" the driver had "acted a little scared, and we thought she might leave us in there" (128-129; cf. 2390, 1820-1823).*

* A comparison of the testimony of Smith, Parks, and Cordero respecting the division of proceeds of the County Federal holdup and the alleged sentiments of Franzese respecting the paucity of loot, discloses major and crucial inconsistencies as to time, places and participants.

Concerning Anne Messineo's share in the County Federal proceeds, Franzese allegedly told Cordero "not to worry about that" (1823; cf. Smith - 128-129; cf. Parks - 2390).

According to Smith, "a couple of days" before the August 13, 1965 robbery of a bank at Oceanside, in Nassau County, he, Cordero, Parks, Anthony Polisi, Florio and Potere met again at the Aqueduct Motor Inn, and plans were made for the robbery of the United Savings Bank at Oceanside (131; 1861; 2403). The bank robbers were allegedly also advised that "Anne Messineo would also drive on this bank robbery" (2403, 131). Cordero allegedly unsuccessfully objected to the selection of the August 13 date, because on that day, a Friday, he was scheduled to be married (1861). That night, Parks, Cordero, Florio and Anne Messineo allegedly drove to the area of the Oceanside bank to determine conditions for a "getaway" (2404, 1862).*

* It is in connection with this Oceanside robbery, and perhaps others, that at trial, the defense contended Mrs. Cordero was the driver of the getaway car - rather than Anne Messineo. In this regard, as will hereinafter be discussed, the FBI procured a warrant for the arrest of Mrs. Cordero after being advised by a reliable informant that it was she who had driven the getaway car. It is likewise particularly noteworthy that the prosecution consented to severing Anne Messineo's case on the eve of the instant trial. As will hereinafter be discussed, a suitcase containing \$10,000 in cash, seized from John Cordero upon his arrest, was given to Mrs. Cordero by the government prior to the commencement of the instant trial.

On the morning of August 13, 1965, the three robbers gathered at the Aqueduct Motor Inn and were allegedly equipped with weapons by Anthony Polisi and Florio (132; 1864; 2404).^{*} Using Parks' automobile and a stolen car, the three gunmen and Anne Messineo, whom they allegedly met elsewhere, drove to the Oceanside area, scouted the getaway route, secreted Parks' vehicle for the second stage of the getaway, proceeded in the stolen car to the Oceanside bank, and executed the robbery (133-134; 1864-1866; 2405-2408).^{**} According to Smith, the escape was accomplished as follows: the robbery quarter drove "a few blocks and dropped off Cordero" (134). Messineo, Parks and Smith drove on some distance to Parks' automobile which the two gunmen entered and drove directly to

^{*} Again, as in the case of the previous County Federal holdup, Anne Messineo is curiously absent from the premises of the Aqueduct Motor Inn as the gun men make their final preparations to leave for the holdup site.

^{**} It is at this point that the issue of Mrs. Cordero's participation in the Oceanside robbery becomes particularly relevant. In certain Jencks Act material turned over to the defense, to wit: an FBI report of Cordero's own statement to various agents, and a previously executed affidavit of an FBI agent, Mrs. Cordero is alleged to have been a participant in the Oceanside robbery.

the Aqueduct Motor Inn (134-135). According to Smith, Anne Messineo did not return to the Aqueduct Motor Inn (135).

In Parks' version of the escape, Smith and Parks were dropped off at Parks' car and Messineo and Cordero drove off together (2408). Cordero's version was that he was "dropped off first" and that his wife came by and the two drove away together (1866-1867). While driving away with his wife, Cordero allegedly had a sudden change of heart, left her in mid-stream, jumped out of the vehicle in which they were riding, hailed a taxi cab and went to the Aqueduct Motor Inn (1868).

In retrospect, it can be seen that this contrived and peculiar explanation of Cordero's post-robbery movements was dictated by the fact that, while in prison, he had given a statement to the FBI directly charging his wife with having been a participant in the robbery. His story, when taken together with the contradictory remarks of Smith and Parks on the same subject, makes it quite clear that Mrs. Cordero must have played a substantial role in the Oceanside robbery. This conclusion is enhanced by the conceded fact that Anne Messineo neither started from the Aqueduct Motor Inn with the gunmen, nor returned to that place following the robbery - as might normally be expected - to determine the extent of the loot and to lay claim to her fair share thereof. It additionally appears through the testimony of Parks, that Cordero did not return with the others to the Aqueduct Motor Inn following the robbery and did not get there "until later that day"

(2409). This fact gives support to the conclusion that Cordero left the robbery scene with Mrs. Cordero. Moreover, in Parks' second version of the Oceanside escape, he materially altered the alleged movements of John Cordero and Anne Messineo in connection with that robbery (2615, et seq; cf. 2408). In this later version, Parks recounts that Cordero was dropped off first and that he, Smith and Messineo drove on to a point where Parks' car was hidden. According to Parks, he and Smith drove off in Parks' car while Messineo there abandoned the escape vehicle and drove away in her own car (2615-2617). The alleged presence of Messineo's automobile in the robbery area was inconsistent with the previous testimony of the robbers that only two cars were used that day. In order to overcome this problem, Parks testified in his second version that on the night before the Oceanside robbery, Messineo parked her car near the Oceanside bank so that it could be used for her personal escape after the robbery (Id.). The point of all of this is that practically every reference to Anne Messineo in the eventual testimony of the bank robber witnesses simply does not fit.

In any event, the gunmen, except for Cordero, allegedly reconvened at the Aqueduct Motor Inn a short while later, turned their loot over to Florio to be held for division at a later time, and then proceeded to the courthouse of the Supreme Court in Queens, where they witnessed Cordero marry the woman who is referred to herein as Mrs. Cordero [nee Eleanor Crisci, a/k/a Eleanor Rupolo] (135-6, 142-3, 1870-1, 2409, 2411).

The newlyweds, their "best man", Smith, and Parks then went off, by chauffeured limousine, to a champagne dinner party to celebrate the nuptials and returned later that night to the Aqueduct Motor Inn (142, 1870, 2411).

The proceeds from the Oceanside robbery allegedly amounted to \$6,000.00 in cash and \$10,000.00 in traveler's checks. During the evening following the robbery, the three gunmen, Anthony Polisi, Florio and Potere allegedly gathered at the Motel. Potere allegedly took \$3,000.00 and the traveler's checks, stating "that Sonny will handle them" (141, 1871, 2409).

4. Anne Messineo's Denial of the Charges and the Subsequent Dismissal of the Case Against Her. During the prior trial of Salvatore and Anthony Polisi, United States v. Polisi, 65 Cr. 442, Anne Messineo was called as a witness and denied any participation in the bank robbery scheme (Polisi trial transcript at pp. 723-744). On the eve of the instant trial, the prosecutor agreed to the severance of Anne Messineo from the trial (5040-2, 5058-68; see particularly the prosecutor's comment at 5069: "If I had it to do over again I don't think I would include her...").

5. The Recognition by the Prosecution that Cordero had Manufactured Evidence to Suit His Own Ends. Annexed hereto as Exhibit A is a page of an F.B.I. Report. The page is one of several provided to me by my client Nicholas Potere. Mr. Potere advises me that this page had been part of the material supplied to the defense pursuant to 18 U.S.C. 3500 and that he had recently retrieved this material from the office of the late

Peter L. F. Sabbatino. When it came into his possession, the page in question was out of sequence. I assume that the government will have no difficulty providing the complete report to this Court. Apparently, predicated upon an interview with the prosecutor herein, the report states as follows:

"On February 7, 1966, Assistant United States Attorney Michael J. Gillen, Eastern District of New York, Brooklyn, New York, advised that he had dismissed the complaint filed on November 12, 1965 charging Thomas Zummo, Federal Bureau of Investigation (F. B. I.) #584 484D with violation of 18 U.S.C. §1503 and 2. Assistant United States Attorney Michael J. Gillen advised that he dismissed the complaint against Thomas Zummo for violation of obstruction of justice on the following grounds. Assistant United States Attorney Gillen was not convinced that threats allegedly made by Zummo to Mrs. John Cordero took place and that the Cordero's manufactured this incident to satisfy their own ends."

6. The Newly Discovered Evidence. The affidavit of Eleanor Cordero attached to the motion papers of the co-defendant John Franzese, clearly establishes, if true:

A. The bank robbers perjured themselves when they excluded Eleanor Cordero from the bank robbery ring, and included Anne Messineo;

B. The bank robbers perjured themselves when they inculpated Franzese and Potere in the bank robbery ring.

Mrs. Cordero's allegations go to the very heart of the prosecution's case. The truth of those allegations is corroborated not only by Anne Messineo's sworn denials of participation, and the government's apparently belated acceptance of those denials, but also by Prosecutor Gillen's eventually

expressed belief that Cordero manufactured evidence. The opinion of the Court of Appeals herein discusses at length the issue which arose at trial as to whether the female switch car driver was Mrs. Cordero or Anne Messineo (392 F. 2d at 961-63). The issue arose on appeal solely in terms of a collateral attack on Cordero's credibility, and, as noted by the Court of Appeals, did not go to the issue of the defendants' guilt or innocence. Within the context of the present motion for a new trial, however, the posture of the Mrs. Cordero-Anne Messineo problem has been drastically altered. If Mrs. Cordero played the role which is now described in her affidavit, and if she participated in the equal division of the proceeds, then she is certainly in a position to know whether Potere and Franzese were participants in the scheme.

7. The Significance of the Stolen Car. Mrs. Cordero's affidavit specifies that the automobile that had been used in the August 13, 1965 robbery of the United Savings and Loan Association Bank in Oceanside, New York, "...had been stolen from the Tavern on the Green in Central Park." (affidavit at p. 2). If that is true, its effect upon the integrity of the government's proof is substantial. At the instant trial, Cordero and Parks testified that the vehicle in question had been stolen from the Kew Motor Inn. They claimed that, after the robbery, Franzese was extremely disturbed because of the location of the theft. They claimed that Franzese told them that he "owned a piece" of the Kew Motor Inn and that since an automobile had been stolen from the place, "the whole thing

was bungled...the Feds are all over." It was because of this that Franzese allegedly told them that the "heat was on" and that they should get out of the area. (Cordero testimony at pp. 1874 et. seq.; Parks testimony at 2413 et. seq.).

No difficulty should be presented for the government to verify whether, in fact, a car was stolen from the Kew Motor Inn at or about the time in question. Similarly, it should present no problem for the government to verify whether or not a car, meeting the description of the car in question, was stolen from the area of the Tavern on the Green. The whole incident is of particular significance to the case since the bank robbers utilized it as an explanation for their move out of New York and initially, to Massachusetts (where they robbed the Holyoke National Bank), and then to Denver and Salt Lake City (where they robbed other banks).

8. A Hearing Should be Granted Herein. It is respectfully submitted that, particularly in view of the questionable source of the evidence which convicted the defendants herein, the repeated contradictions which permeated the testimony and pre-trial behavior of the prosecution's witnesses herein, and the various other factors outlined supra, a sense of justice cries out in this case for an evidentiary hearing at which Mrs. Cordero can be put to the test of confrontation and cross examination. Similarly, the government should be made to produce for this Court any information it has at its disposal concerning the stolen car and concerning the informant who initially provided the government with information to the effect that Mrs.

Cordero was, in fact, involved. The defense has never been provided with any additional information concerning what this informant may have told the government. In the event that this Court does not deem it appropriate to order the production of the informant at this time, it is respectfully requested that this Court direct the government to file with this Court, under seal, any and all information it has in its possession concerning and derived from the informant in question with respect to his knowledge of the facts of this case. Our request for the production of such information is so that this Court may, at least, have an opportunity to review it in camera, and so that, if necessary, the matter may be further reviewed on appeal.

Respectfully submitted,

HENRY J. BOITEL
Attorney for Defendant Potere

Dated: New York, New York
December 10, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

JOHN "SONNY" FRANZESE,

Defendant.

- - - - - X

Criminal No.

66 CR 161

GOVERNMENT'S MEMORANDUM OF LAW

PRELIMINARY STATEMENT

The defendant Franzese moves under 28 U.S.C. 2255 for an order vacating the judgment and conviction, and dismissing the indictment, and also in the alternative, for a new trial on the grounds "that the testimony of the main Government witness was false and perjurious and of such material nature as to be the main basis of such verdict, and that such perjured testimony was or may have been procured, induced or compelled by promises of leniency by Government attorneys or their agents."

ISSUES PRESENTED

The sole question before the Court is whether the motion papers and supporting affidavits of the defendant are sufficient to require a hearing.

ARGUMENT

THE AFFIDAVITS FILED IN SUPPORT
OF THE DEFENDANT'S MOTION DO NOT
REQUIRE THAT A HEARING BE HELD.

The instant motion represents the latest in a series of motions made over the past seven and one half years seeking to overturn the conviction of the defendant John "Sonny" Franzese. It is apparent from the papers themselves that the motion should be denied.

At the outset, it is apparent that, although the motion purports to be brought under 28 U.S.C. §2255, it is actually a motion for a new trial based on alleged newly discovered evidence. As such, it is to be determined under the standards governing such motions. The two year limitation provision of Rule 33 of the Federal Rules of Criminal Procedure, which is clearly applicable here, cannot be avoided by the mislabeling of a motion. The Supreme Court of the United States faced a similar issue concerning Rule 12(b) and squarely held that that Rule, since it contained a specific waiver clause, did indeed apply in a §2255 motion. Davis v. United States, 411 U.S. 233, 236-243 (1973). Similarly, it is clear that the two year limitation in Rule 33 on newly discovered evidence cannot be avoided by placing a different label on the

motion. See also Tropiano v. United States, 323 F. Supp. 964 (D.C. Conn. 1971).

The standards to be applied to a motion for a new trial on grounds of newly discovered evidence have been clearly explicated and consistently followed in this Circuit. They are: (1) The Court must be satisfied that the evidence is in fact newly discovered, (2) that it could not have been discovered earlier with due diligence, (3) is not merely cumulative or impeaching, (4) is material to the issues and (5) is of such nature that upon a retrial it will probably produce an acquittal. United States v. Fassoules, 203 F. Supp. 114, 117 (D.C.N.Y. 1962), see also, United States v. Kahn, 472 F.2d 272 (2d Cir. 1973), United States v. DeSapio, 456 F.2d 644 (2d Cir. 1972).*

It is clear that no showing of prosecutorial misconduct has been made here, despite defendant's bald, conclusory allegations to the contrary. In light of the general content of Eleanor Cordero's affidavit, it might have been expected that such an allegation would be made by her, but her affidavit is devoid of any facts tending to support such a finding. Thus, stripped of the unsupported allegations

* When there is a showing of prosecutorial misconduct, the above standards are relaxed to require only a showing that the newly discovered evidence is merely material or favorable to the defense. Giglio v. United States, 405 U.S. 150, 153-154, 92 S. Ct. 763 (1972).

contained in Mr. Lyon's affidavit (p.5 and 6), the motion clearly does not even approach the point where the standards of Giglio, supra should be applied.

As stated above, one of the elements which must be established is that the allegedly newly discovered evidence could not have been discovered earlier with due diligence. The soundness of this requirement is self-evident, and has been endorsed in the interests of the orderly administration of justice, most recently in United States v. Marquez, 303 F. Supp. 802, 808 (D.C.N.Y.) aff'd mem. 490 F.2d 1183 (2d Cir. 1974). Here, the facts are even less favorable to the defendant. Over seven years have passed since the trial. Eleanor Cordero's name and an allegation concerning her involvement in the bank robberies were not only known to the defense at the trial, but were the subject of inquiry during the trial (see page 6 of Mr. Lyon's affidavit). The affidavit and papers make no showing at all of her unavailability either during the trial or for the past seven years. The allegations concerning her meeting her husband in the U.S. Attorney's Office are totally inadequate to support a finding of unavailability. In addition, even if true, it only increases the significance of her failure to even attempt to impute knowledge of the alleged falsity of

John Cordero's testimony to the Assistant U.S. Attorney.

With regard to the concept of unavailability as an assumed correlative of Eleanor Cordero's status as the wife of a Government witness, there is neither authority nor logic in such an assumption. In fact, United States v. Mosca, 475 F.2d 1052, (2d Cir. 1973), cert. denied 412 U.S. 948 93 S. Ct. 3003, 3019, appears to indicate that the contrary view should apply, insofar as the wife of a Government witness was accorded treatment no different than any other potential witness. The inordinate amount of time which has elapsed since the trial increases the necessity for the defendant to show that due diligence has been applied in efforts to obtain Mrs. Cordero's testimony. No such showing has been made.

In light of the absence of any showing of prosecutorial misconduct, the defendant must show that the newly discovered evidence would probably have resulted in an acquittal. United States v. DeSapio, supra. United States v. Costello, 255 F.2d 876 (2d Cir.), cert. denied 357 U.S. 937 (1958). Clearly, no such result can be inferred from the instant affidavit. The only documentary evidence submitted, (the postcard, Def's Ex. #1), clearly does not contradict the evidence at the trial as to the July 19-22 meeting at the Aqueduct Motor Inn. No recantations of any of the four primary Government witnesses are shown or even

alleged. The defense did offer evidence at the trial directly contradicting the testimony of the Government witnesses. Cordero, Parks, Smith and Zaher were each subject to an extensive, thorough and probing cross-examination, and their credibility was established by the jury's verdict. There being no indication that their testimony at a new trial would be anything other than as given in the past, there is no basis for supposing that the verdict might be different, much less that it probably would be different. United States v. Polisi, 416 F.2d 573, 576-577 (2d Cir. 1969), United States v. Lombardozzi, 236 F. Supp. 957 (E.D.N.Y. 1964), aff'd 343 F.2d 127 (2d Cir.), cert. denied 381 U.S. 938, 855 S. Ct. 1771 (1965). See also, United States v. Zane, ___ F.2d ___ (2d Cir. Slip opinion, 227 decided November 4, 1974).

As this Court ruled in September 20, 1972, in denying one of the defendant Franzese's previous motions for a new trial.

"Rule 45(b) of the Rules of Criminal Procedure denies the court the power to enlarge the period fixed in Rule 33 for making a motion for a new trial on the ground of newly discovered evidence. United States v. Robinson, 361 U.S. 220, 224, 80 S. Ct. 282, 285-286 (1960). The time limitation is jurisdictional. United States v. Smith, 331 U.S. 469, 67 S. Ct. 1330 (1947); Jacobanis v. United States, 285 F.2d 485, 486 (1st Cir. 1958); Oddo v. United States, 171 F.2d 854, 858; 2 Wright Federal Practice and Procedure §558.

The burden of showing the right to a new trial rests squarely on the moving party, including the showing that the preconditions of Rule 33 have been met. The citation supporting this proposition is particularly appropriate. United States v. Franzese, 321 F. Supp. 993, aff'd 438 F.2d 536 cert. denied, 402 U.S. 995 (1971).

For all the above reasons, the motion should be denied without a hearing. United States v. Troche, 213 F.2d 401, 403 (1954), United States v. Johnson, 327 U.S. 106, 66 S. Ct. 464, 466 (1946). See also, United States v. Williams, ____ F.2d ____ (2d Cir. slip opinion, 5543; decided September 25, 1974).

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York

Thomas R. Pattison
Assistant U.S. Attorney
(Of Counsel)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
THE UNITED STATES OF AMERICA,

74 C 1575
(Criminal Number 66 Cr 161)
[JM]

- against -

JOHN "SONNY" FRANZESE,

Defendant.
-----x

MEMORANDUM OF LAW, WITH SUPPORTING AFFIDAVITS,
ON BEHALF OF MOVANT, JOHN "SONNY" FRANZESE

Yours, etc.
LYON & ERLBAUM
Attorneys for
JOHN "SONNY" FRANZESE
Office & P.O. Address
123-60 83rd Avenue
Kew Gardens, New York 11415
(212) 263-3235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
THE UNITED STATES OF AMERICA

- against -

74 C 1575
(Criminal No. 66 Cr 161)
[JM]

JOHN "SONNY" FRANZESE,

Defendant.
-----x

This memorandum of law, with supporting affidavits, is submitted in support of Mr. Franzese's motion for a new trial and in answer to the Government's memorandum of law.

Although the sworn statement of Eleanor Cordero, submitted in our original motion papers, contains new and startling evidence, this motion is brought pursuant to 28 U.S.C., Section 2255, and is not a motion for a new trial based upon newly discovered evidence (Rule 33 of the Federal Rules of Criminal Procedure). Contrary to the Government's contention, the two-year statute of limitations is inoperative. The Government cites the case of Davis v. United States, 411 U.S. 233, 236-242 (1973), in an attempt to have the two-year statute of limitations apply to the case at bar. Their reliance upon Davis is clearly misplaced. The petitioner in Davis raised the contention that the Grand Jury which indicted him systematically excluded minority group members. The Court was faced with the very narrow issue

of whether the specific time limitations of Rule 12(b), Federal Rules of Criminal Procedure, applied to a Section 2255 motion. Here, there is no specific time limitation for Mr. Franzese' attack upon the validity of his conviction. 28 U.S.C., Section 2255, permits a motion to be "made at any time". Neither a statute of limitations nor the doctrine of Laches is applicable to a motion under Section 2255. Heflin v. United States, 79 S. Ct. 451, 358 U.S. 415 (1959).

Under no view of the facts, however, can there be even a suggestion that Mr. Franzese has been lax in bringing this application some seven years after his conviction. Eleanor Cordero was the wife of John Cordero, a Government informer and chief witness at the trial. The trial record is replete with offers of testimony, allowed into the record, that John Cordero held back the name Sonny Franzese because of fear. Realistically speaking, if anyone on behalf of the Franzese' approached Mrs. Cordero during the trial, they would have laid themselves open to an accusation of intimidating witnesses. The very act of reaching out to Mrs. Cordero (i.e., locating her address, contacting people who knew her, setting up an interview, etc.) would have aroused Mrs. Cordero's fears and suspicions. It was hoped that the passage of time would create a more receptive atmosphere.

Point of fact - In 1971, an attempt was made to speak with Mrs. Cordero. Attached hereto (Exhibit A) is the affidavit of Mr.

Carmine J. Pepe. In the summer of 1971, he and an investigator, Carmine Delgado, unsuccessfully attempted to interview Mrs. Eleanor Cordero. Her whereabouts were disclosed by Jack Eseveroff, Esq., who was acting as counsel on behalf of JOHN "SONNY" FRANZESE. As indicated in Mr. Pepe's affidavit, a strenuous effort was made to obtain a statement from Mrs. Cordero concerning her role in the bank robberies. Mrs. Cordero said that she would not talk to Mr. Pepe because her husband, John Cordero, had told her that John Franzese was responsible for the death of her former husband, Ernie "The Hawk" Rupolo. Even in 1971, the fear had not yet dissipated. The movant herein has exercised "due diligence" in obtaining a statement from Mrs. Cordero and corroboration of her statement.

It is quite apparent from the face of Eleanor Cordero's original sworn statement that this motion for a new trial is not a frivolous one, but goes to the very heart of the prosecution's case. Mrs. Cordero states in unequivocal terms that "all of the testimony involving JOHN "SONNY" FRANZESE, and implicating him in a conspiracy to commit the above-mentioned bank robberies, is false". (Page 7 of her original affidavit). Simply stated, she takes JOHN "SONNY" FRANZESE right out of the Government's case. There can be no doubt that if her actual role was known to the defense, and she was available to the defense, Mr. Franzese would have been acquitted. The Government's position that "there is no basis for supposing that the

verdict might be different, much less that it probably would be different" is patently ridiculous. Eleanor Cordero, under the pains and penalties of perjury, has completely exculpated Mr. Franzese. Being an actual participant in the events, she uniquely possessed knowledge of the true state of affairs concerning the bank robberies. The original papers submitted herein unquestionably established our right to a hearing.

Judge Mishler, however, during oral argument, indicated that any matter which would corroborate Mrs. Cordero's statement should be submitted on papers. Pursuant to that directive, we submit the following: Mrs. Cordero has stated in her original affidavit that after the Oceanside robbery, they decided to destroy stolen traveler's checks, since they were numbered and "hot". Mrs. Cordero, John Cordero, and Richie Parks, went to a restaurant/bar in Yonkers, known as Wilsker's, and intentionally left the checks in the restaurant/bar in an attache case. Richie Parks stayed at the bar to make sure that the attache case was found. Manifestly, Mrs. Cordero's knowledge of the events comes from the fact that she was actually there and was an actual participant in the Oceanside bank robbery.

Attached hereto (Exhibit B) is the affidavit of Irwin Blye, a licensed private investigator. As stated in his affidavit, Mrs. Wilsker, wife of the former owner of Wilsker's Restaurant, stated that, in fact, an attache case containing stolen bonds and traveler's checks was found at Wilsker's and that, specifically, she

was the one who found the attache case. This corroborates and establishes to an utter certainty that Eleanor Cordero, and not Ann Messineo, was the actual female participant in both the Kew Gardens and Oceanside robberies.

Mr. Gillen, the United States Attorney prosecuting the case at trial, stated to the Court that the incident concerning the bonds and traveler's checks occurred in a place known as the "Red Coach Grill" (731, 732 of the Trial Record). He further indicated, "That's how they (bonds and traveler's checks) came into our possession" (732). The Government was thus aware of the actual location where the traveler's checks were found, since that's how they came into their possession. The Government never let the name Wilsker's become exposed at trial, and, for obvious reasons; there was a real danger that defense counsel would be able to establish, through eyewitnesses, that the woman present at Wilsker's was, in fact, Eleanor Cordero, and not Ann Messineo, as their chief witnesses testified.

In her affidavit (attached hereto as Exhibit C), Mrs. Cordero states that at the time of her arrest in her home in Bethel, Connecticut, the arresting agents took from her closet one dress, a newly purchased black and white silk print dress with capped sleeves. The agents indicated at that time that this was the dress that Mrs. Cordero was wearing while driving the get-away car. However, Mrs.

Cordero states that she did not wear that dress during any of the robberies. It was worn on a single occasion, that being the time when they went to Wilsker's to dump the traveler's checks. The conclusion is inescapable that positive identification of a woman wearing a black and white dress (Eleanor Cordero) was made by someone from Wilsker's. It would appear that the Government could not risk the danger of exposing the name Wilsker's. The fact that Wilsker's was not mentioned resulted in misleading the Court and defense counsel. The Government knew where the checks were found, yet the Government's witnesses never revealed the actual location where the bonds and traveler's checks were dumped. John Cordero testified that they originally went to the Red Coach Grill to dispose of the checks, but could not get in the Red Coach Grill because of their dress. They then proceeded to another location but, quite conveniently, John Cordero could not recall the name of that place. (1886 of the Trial Record). This incredible "lapse of memory" is thoroughly consistent with the Government's cover-up and effectively blunted any attempt by defense counsel to obtain the actual location where the checks were found. Their efforts at covering up were quite successful and it was not until the October, 1974, affidavit of Mrs. Cordero that the name Wilsker's was revealed.

As stated in her affidavit, Mrs. Cordero was arrested on October 1, 1965, at her home in Bethel, Connecticut. The Government

already had information from a confidential informant that Mrs. Cordero was involved in the bank robberies and was the driver of the get-away car. Her daughter, Stephanie Cordero, was also in the house at the time of her mother's arrest. Eleanor Cordero was immediately taken to the hospital and Stephanie was driven to a foster home by two of the arresting agents.

Stephanie Cordero has stated, under oath (Exhibit D), that while she was in the car, being driven to the foster home, the agents told her that her mother was a bank robber and had participated in several bank robberies. They told her that they knew that her mother and stepfather had driven her to a location in the family car, that she was left in the car for several hours until her mother and father returned. She was told by the agents that they knew that she was made to lay down on the floor in the back of the car with her mother while her father drove the car away from one of the bank robberies. It is not difficult to imagine what a traumatic experience this was for Stephanie, to be told that her mother was a bank robber. The sequence of events described to Stephanie neatly fitted the agents' theory of how the Oceanside robbery was perpetrated. Moreover, the agents questioning of Stephanie Cordero establishes that the agents had actual knowledge of Eleanor Cordero's role in the Oceanside robbery as the driver of the get-away car.

During the trial, John Cordero told Eleanor Cordero that defense counsel, Maurice Edelbaum, might put Stephanie on the stand. Mrs. Cordero then asked Stephanie what she could possibly add to the case and Stephanie related to her the events that transpired in the car with the agents on the day of the arrest.

Mrs. Cordero, in her attached affidavit, firmly lays to rest any and all pretense that the Government did not know that she, and not Ann Messineo, was the driver of the get-away car. Mrs. Cordero attests to the fact that her husband, John Cordero, in his negotiations with the Government, was able to consummate a deal whereby Eleanor Cordero would be "cut loose from the case" and Ann Messineo would be substituted in her place. John Cordero assured his wife that it didn't even matter that she didn't look like Ann Messineo, because they were going to get the deal anyway. He told her that there even were eyewitnesses who would be able to identify her as the driver of the get-away cars. Even this fact would not scuttle his deal with the Government. It is all very well for the Government to deny actual knowledge of the fraud perpetrated by John Cordero, et al. Eleanor Cordero, by finally coming forward, has offered information which makes such a contention one to strain our credibility.

If our faith in the Government's contention can withstand an attack by the circumstances recounted in the attached

affidavits, there remains the question of whether the Government's position can be maintained in the face of what must have been a studied avoidance by the Government's agents of patent facts.

From the moment that the Government consummated its bargain with John Cordero, they engaged in the "studied avoidance" of the truth. No agent or United States Attorney ever once bothered to ask Mrs. Cordero to explain her actions, or even say a word about her knowledge of the robberies. No agent or United States Attorney ever even asked her to deny her participation in the robberies. This was despite the fact that she met with Mr. Gillen on several occasions while visiting her husband at the United States Attorney's office. At least this would have been blinding their eyes to the obvious. Neither does the Government have to drop the charges against a defendant to whom all the evidence points as a guilty party. By the very circumstances of John Cordero becoming an informer and Eleanor Cordero meeting John Cordero in Mr. Gillen's office every day, they were no longer at arms length. Certainly the Government could have said to John Cordero (who insisted on his wife's release) "All right, we will release her provided she's viewed by witnesses and we get a better explanation of her admitted role in the transaction." Even after the wholesale substitution of personalities was made, Mrs. Cordero was never asked to deny her involvement in the robberies, and much to her surprise (and relief), was never viewed by any eyewitnesses. The

Government deliberately and systematically avoided every opportunity to confront Mrs. Cordero, or put her non-involvement to any test.

The most incredible episode in this entire action involves the refunding to Mrs. Cordero of the actual proceeds of the robberies. As noted in her attached affidavit, after the deal was made with her husband, \$10,000.00 was returned to her without question. At first, the Government's agents stated, when Mrs. Cordero was arrested, that they had recovered the proceeds of the bank robberies. But once the bargain had been struck with John Cordero, the money was returned to Mrs. Cordero, without question. The money was returned to her despite the fact that the Government knew that some of the money found (together with the money returned to her) actually had the same serial numbers as the bills that were reported stolen. Her story, that the money was given to her by her former husband for her daughter, was accepted without question. Not only had her husband bargained her right out of the robberies, but he also bartered her share of the loot back for her. If the Government has such a high regard (at least \$10,000.00 worth) for Mrs. Cordeo's veracity, then they should have no objection to the granting of this motion, inasmuch as it is principally based upon the allegations of Mrs. Cordero.

It appears to be inescapable that any claim by the Government that Eleanor Cordero's role was unknown had to be the sheerest hypocrisy. Thus, the obvious conclusion to have been drawn was that

John Cordero, et al., were perpetrating a fraud on the Court and to allow them to do so was to assist in such a fraud. The motivation for ignoring the obvious about Eleanor Cordero, and making a blind bargain about her with John Cordero, becomes very understandable but should not be sanctioned by this Court. The Government cannot avoid their obligation to see that "justice be done" and refrain from obtaining a conviction by the use of perjurious testimony. It is significant to note that the Government, although requested to do so by Judge Mishler at oral argument, failed to deny by affidavit Mrs. Eleanor Cordero's allegations. We submit that they will be unable to do so. Shocking as it may sound, the Government took Eleanor Cordero right out of this case and substituted her with an entirely different person, Ann Messineo. The Government will be hard-pressed to explain away the record facts that although Ann Messineo, the alleged culprit, was indicted, her case was severed for trial on consent of the Government and was dismissed on motion by the Government (Assistant United States Attorney Boyd, 66 Cr 161, Docket Sheet entry for 7-1-71). Ann Messineo testified at the Polisi trial and declared her innocence under oath, yet she was never indicted for perjury. The Government could hardly press their case against Messineo without exposing the fraud perpetrated at the Franzese trial.

Eleanor Cordero's attestations do not merely bear on the

question of her guilt, as opposed to that of Ann Messineo, but go to the very heart of the prosecution's case against JOHN "SONNY" FRANZESE. Mrs. Cordero states in unequivocal terms that JOHN "SONNY" FRANZESE is innocent of any conspiracy involving any bank robberies in which she participated. The Government knowingly used perjurious testimony concerning the central issues of the case. Mrs. Cordero, as an actual participant in the robberies, was in the unique position of knowing exactly how, when, where and by whom the bank robberies were planned, perpetrated, and the loot divided. Mrs. Cordero has been able to recall the events concerning the Oceanside and Kew Gardens robberies in intimate detail. The name JOHN "SONNY" FRANZESE never once enters the picture. Succinctly stated, he had nothing whatever to do with the bank robberies.

The affidavits of Stephanie and Eleanor Cordero, and the record facts of this case, establish that the Government knew that Eleanor Cordero was the actual driver of the get-away car and not Ann Messineo. Stephanie Cordero states that the F.B.I. told her all about her mother's involvement. Eleanor Cordero states that her husband consummated a deal with the Government that included not only complete uninvolvement for herself but also the return of her share of the loot. The affidavit by Irwin Blye establishes that Eleanor Cordero was the female member of the bank robbery gang. Under no view of the facts can it be stated that the Government was ignorant of the fact that their star witnesses were testifying

falsely and were committing perjury.

This present motion is made pursuant to 28 U.S.C.,
Section 2255, which states:

"Unless the motion and the files of the records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto."

It is respectfully submitted that Mr. Franzese has more than carried his burden of showing that he is entitled to the relief mandated under Section 2255 of Title 28 of the United States Code. The files and records of this case do not conclusively show that the prisoner is entitled to no relief but indicate the opposite. All known notions of fairness and justice call for the granting of a hearing in this action. Our system of laws demands no less.

Dated: Kew Gardens, New York
January 16, 1975

Respectfully submitted,
LYON AND ERLBAUM
Attorneys for Defendant
JOHN "SONNY" FRANZESE
Office & P.O. Address
123-60 83rd Avenue
Kew Gardens, New York 11415
(212) 263-3235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

JOHN FRANZESE, et al.,

Defendants.

AFFIDAVIT

Docket No. 74 C 1575
(66 Cr 161 JM)

-----X

STATE OF NEW YORK)
 : SS.:
COUNTY OF QUEENS)

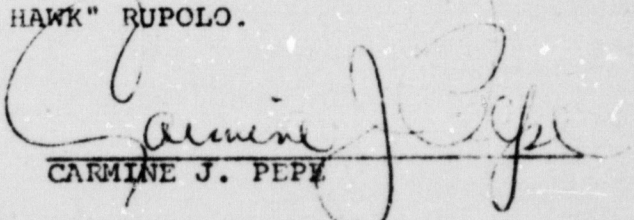
CARMINE J. PEPE, being duly sworn, deposes
and says:

I reside at 18 Monroe Street, New York,
New York 10002.

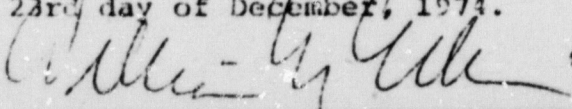
During the summer of 1971, I met ELFANOR
CORDERO at the Merry-Go-Round Bar at Queens Boulevard
and 46th Street, Sunnyside, Queens, New York. This
meeting resulted from the following circumstances:

JACK ESEVEROFF, ESQ., on behalf of JOHN
FRANZESE, discovered the whereabouts of ELFANOR CORDERO,
attempted to reach her and left word that he wished to
talk to her. She responded by calling him at his office
at 186 Joralemon Street, Brooklyn, New York, and a meeting

was arranged for her to be interviewed by myself and an investigator, CARMINE DELGARDO. Mr. ESEVEROFF then communicated with me and told me of the calls and of the arrangement for the meeting and pursuant to his request, I went to the Merry-Go-Round Bar on Queens Boulevard, Sunnyside, Queens, New York with CARMINE DELGARDO and attempted to interview MRS. CORDERO. Both MR. DELGARDO and myself questioned ELEANOR CORDERO as to the true facts of the bank robberies which her husband admitted committing together with PARKS, SMITH and ZAHNER, and for which JOHN FRANZESE was convicted as an alleged mastermind. MRS. CORDERO refused to talk to us. MR. DELGARDO and myself remained with her for about a half hour; we persisted in asking her to please tell us the truth about these robberies and about any role that MR. JOHN FRANZESE played in them or whether he in fact did play a role, but it was to no avail. MRS. CORDERO would not answer questions concerning the robberies. She said, at that time, that she would not talk because her husband, JOHN CORDERO, had told her that JOHN FRANZESE was responsible for the death of ERNIE "THE HAWK" RUPOLO.


CARMINE J. PEPE

Sworn to before me this
23rd day of December, 1974.



NOTARY PUBLIC
STATE OF NEW YORK
COMM. EXPIRES 12-31-75
JAN 1 1975

STATE OF NEW YORK)
) ss. :
COUNTY OF QUEENS)

IRWIN BLYE, being first duly sworn, deposes and says:

I am a New York State licensed private investigator, holding license number 13665.

That on or about January 2, 1975, I was retained by the wife of the movant, JOHN "SONNY" FRANZESE, to conduct an investigation relative to locating any person who could be able to corroborate the statement given by Eleanor Cordero, to wit, that the incident concerning the bonds and travelers checks occurred at a restaurant/bar known as Wilsker's, located in the Cross-County Shopping Center, Westchester County, State of New York.

Through investigation, I was able to locate the former owner of Wilsker's, Mr. and Mrs. Abraham Wilsker, at their present residence in Fort Lauderdale, Florida.

It was stated by Mrs. Abraham Wilsker that they discontinued the management of the restaurant/bar some time in 1967 and were actively managing the restaurant/bar in the year 1965.

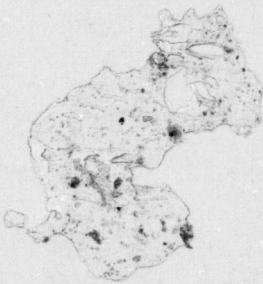
Mrs. Abraham Wilsker stated to me that around 1965, in the warm weather, she found an attache case in their restaurant which contained valuable bonds and checks which she possibly believed bore the name "American Express". She was certain that there was no cash in the attache case and that the bonds and other items were turned over to the authorities.

Sworn to before me this

15th day of January, 1975

Charles Wender
CHARLES WENDER
Notary Public, State of New York
No. 244520809
Qualified in Kings County
Commission Expires March 30, 1976

Irwin Blye
IRWIN BLYE



STATE OF NEW YORK)
) ss. :
COUNTY OF QUEENS)

ELEANOR CORDERO, being first duly sworn, deposes and says:

October 1, 1965, was the date that I was arrested at my home in Bethel, Connecticut. At the time of my arrest, my daughter, Stephanie Cordero, was at home. I was immediately taken to the hospital and I was not allowed to see my daughter. Subsequently, I learned that on the day of my arrest, my daughter, Stephanie Cordero, was driven to a foster home by the arresting agents, where she remained during my incarceration.

During the trial, my husband told me that Mr. Gillen had told him that Mr. Gillen thought that the defense lawyer, Maurice Edelbaum, might put my daughter, Stephanie, on the stand. I asked what Stephanie could add and I questioned Stephanie and she told me the facts included in her affidavit, which I have read, and which is attached to these papers.

When I was arrested, the government already had information that I was involved in the bank robberies and that I was the driver of the getaway car. My husband, John Cordero, in his negotiations with the government, was able to make a deal where I would be cut loose from the case. It would be arranged that Ann Messineo would be substituted in my place as the driver of the getaway cars. When my husband told me of the arrangement, I asked him if Ann Messineo looked like me. He told me that it doesn't matter what she looks like, we're going to get the deal. My husband told me that I was even identified by eyewitnesses to the robberies but that I would be cut loose. No agent or United States Attorney ever

made me explain my actions, or even say a word about my knowledge of the robberies. Yet I was not prosecuted.

The same procedure was followed with the money that was found at the time of my arrest. At first the government agents stated that they had found the bank robbery money. But, after the deal was made with my husband, the money was returned to me without any question. The government knew that some of the money found (together with the money that was returned to me) actually had the same serial numbers that were reported stolen. My story, that the money was given to me by my former husband for my daughter, was accepted without question. Not only had my husband bargained me out of the robberies, but he was able to get me the actual proceeds from the robberies. I was not the only one to get property returned. Both Parks and Smith were allowed to keep automobiles which were purchased with moneys obtained from the bank holdups.

Before my arraignment, Mr. Gillen accused me of being a participant in the robberies. I never denied that fact to Mr. Gillen, but only refused to speak to him until I was able to consult an attorney. At no time, however, did I ever deny my participation in the robberies to any agent of the Federal Government. Neither Mr. Gillen nor any other United States Attorney ever asked me to do so. Even after the substitution of Messineo for myself, I was never asked to deny my involvement. Much to my surprise and relief, after my arrest, I was never viewed by any eye-witnesses.

At the time of my arrest in my home in Bethel, Connecticut, the agents took from my closet a black and white silk print dress, with cap sleeves. No other dress was taken from my home. The agents indicated that this was the dress that I was wearing during the robberies. That black and white dress was not worn by me during any of the robberies and was only worn on a single occasion, that being the time that we went to Wilsker's to "dump" the travelers checks.

Sworn to before me this

15th day of January, 1975

/s/

ELEANOR CORDERO

STATE OF NEW YORK)
) ss. :
 COUNTY OF QUEENS)

STEPHANIE CORDERO, being first duly sworn, deposes and says:

I am the daughter of Eleanor Cordero. On or about October 1, 1969, the day that my mother was arrested in our home in Bethel, Connecticut, I was driven by two F.B.I. agents to a foster home. While I was being driven to the foster home, the F.B.I. agents asked me if I knew that my mother was a bank robber and had participated in several bank robberies. They also told me that they knew that my mother and father had driven me to a location in our car and that my mother and father left the car and entered another car, leaving me in our car. They further told me that they knew that I waited in the back of our car for two hours, until my mother and father returned in a different car. They told me that they knew all about how my mother and I hid in the back of the car as my father drove off.

Sworn to before me this

15th day of January, 1975.

STEPHANIE CORDERO

CHARLES J. [unclear]
 Notary Public, State of New York
 Commission Expires March 30, 1976

RJD:TRP:mt
F. #742,235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

AFFIDAVIT

- against -

74 C 1575

JOHN "SONNY" FRANZESE,
Defendant.

3-4-75

----- X

EASTERN DISTRICT OF NEW YORK, SS:

THOMAS R. PATTISON, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Eastern District of New York and is presently assigned to this matter.

The following information is based upon a review of the official transcript of the trial of the case, the exhibits, all pertinent post trial proceedings, and the attached affidavits and exhibits.

At the outset, it is the Government's position that the motion as a whole, and Mrs. Cordero's affidavits in particular, should be viewed in conjunction with the affidavit of F.B.I. Agent Coulsen and the report of his interview with Mrs. Cordero in 1971 attached hereto as "Exhibit 1". When that is done, the defendant Franzese's motion is seen for what it truly is, merely the latest in a series of maneuvers designed to "...get Sonny out on the street." (Quote attributed by Eleanor Cordero to "Carmin", Gov't. Ex. "1").

It should be noted that, although Mr. Carmine J. Pepe, in attachment "A" to the defendant's motion of January 16th, 1975 states that he and one Carmine Delgado interviewed Mrs. Cordero in the Merry-Go-Round bar, according to Mrs. Cordero, one "Nick Conti", accompanied by a "Carmine" (last name unknown)

- 2 -

arranged and conducted this interview. Additionally, the circumstances as to how and by whom the meeting was arranged, contain curious and possibly significant differences. In this connection, it should be pointed out that Mrs. Cordero contacted the police immediately after the visit to her daughter and that the meeting was surveilled by Detectives of the New York City Police Department. It is difficult to believe that Mrs. Cordero was lying at this time, i.e., in September of 1971, under the above circumstances and under the very noses of Police officers, who were, in effect, monitoring the entire incident.

The very crux of the September 29th, 1971 incident is, however, what can only be characterized as a bald attempt to intimidate and influence a witness by thinly veiled threats of violence, and also by an overt offer of bribery. That this was not an attempt to elicit the "truth", but was rather an attempt to secure a perjurious statement is indicated by Mrs. Cordero's response to "Nick Conti's" question concerning John Cordero's testimony. Mrs. Cordero states, according to the agents "that she did not know that he lied", and that John never talked to her about the robberies, thus indicating her unfamiliarity with the facts giving rise to the conviction.

It must also be kept in mind that this meeting, and Mrs. Cordero's recounting of it, occurred at a time when she had no motive to conceal any alleged involvement on her part owing to fear of prosecution, the statute of limitations having run on the 1965 robberies.

The fact that now, almost three and one half years later, Mrs. Cordero finally provided the precise statements, which had been unsuccessfully sought so long ago, is proof that the proclaimed persistence of "Nick" and "Carmine", or others similarly motivated, apparently reaped its rewards.

With the above in mind, let us analyze the specific

- 3 -

allegations contained in the defendant's motion.

I.

GOVERNMENT CONCEALMENT

Mr. Lyon and Mr. Boitel both allege that the Government was guilty of impropriety in concealing allegations of Mrs. Cordero's involvement in the bank robberies. Even a cursory analysis of the trial reveals that such allegations were not only unconcealed, but were the subject of lengthy cross-examination before the jury, and comprised a major keystone of the overall defense strategy. This strategy, it must be noted, was only available to the defense as a result of the Government's voluntary disclosure of John Cordero's prior statement concerning his wife's role, the fact that money earlier seized from her had been returned, and the information leading up to her arrest. As the defendant Franzese emphasized in his appellate brief, John Cordero admitted his wife drove the car in the August 13th, robbery (T. 2005, 2006, 2007, Franzese's Br. p. 27). The defendant Franzese's appellate brief is replete with references to this issue, thus indicating that full and effective use was made of the Government documents turned over to the defense not only at trial, but before the Court of Appeals. Such is hardly the stuff of concealment.

It is apparent that this charge of impropriety is little more than a transparent effort to establish what the defendant apparently recognizes is an essential predicate for the exercise of jurisdiction of the district court here. For further discussion of this point the Government respectfully refers the Court to its memorandum of law previously submitted.

II

THE SEIZURE OF THE TRAVELER'S CHECKS

The defendant Franzese alleges that the Government deliberately concealed the fact that a portion of the loot from the August 13th, 1965 robbery of the Oceanside bank, con-

- 4 -

sisting of traveler's checks, were recovered in a restaurant known as "Wilsker's" in Yonkers, New York.

The record of the trial indicates, however that the prosecution attempted to offer the actual traveler checks into evidence (T. p. 731,732.....). Although Mr. Cillen states that he thought that the Red Coach Grill was the situs of the recovery, such an error is understandable in light of John Cordero's testimony concerning the Red Coach Grill. (See also, colloquy at p. 2420). That testimony, however, at page 1886, indicated that the Red Coach definitely was not the place where the traveler's checks were abandoned. This coupled with the prosecutor's acknowledgement that the Government was in possession of the checks, could have, and should have, prompted the defense to inquire as to the actual location of the seizure. Had the Government prevailed on its offer of proof concerning their admission into evidence, the actual location of the recovery would undoubtedly had to have been revealed. The fact that the defense apparently did not simply ask where they were found is not the issue. The issue is that the above facts demonstrate unequivocally that the Government certainly did not deliberately conceal references to Wilskers from the defense. Again, such is hardly the stuff of concealment.

In light of the above, Mr. Lyon's fanciful theory concerning the significance of the seizure of Mrs. Cordero's black and white dress are seen as optimistic conjecture on his part.

Moreover, viewed objectively, John Cordero's testimony that the traveler's checks were lost during the course of an attempted sale, is much more credible than Mrs. Cordero's rather strained version. To take the risks inherent in such a venture when the ocean at night, or a bonfire in a vacant lot, were both equally available and far less dangerous, would seem rather

- 5 -

illogical to even an amateur thief, much less the professionals involved here, when the only purpose was to get rid of the checks.

III.

THE STOLEN CAR

In her original affidavit, Mrs. Cordero states that the automobile used in the August 13th, 1965 robbery had been stolen from the Tavern On The Green in Central Park, New York. John Cordero had testified at trial that this automobile was stolen from the vicinity of the Kew Motor Inn in Queens.

As the attached F.B.I. reports (Exhibit "2") conclusively demonstrate, the auto was stolen from the parking lot of the Kew Motor Inn on August 2nd or 3rd, 1965.

At page 12 of his memorandum of law, Mr. Boitel (who represents the defendant Potere and who has joined in this motion states, after summarizing Mrs. Cordero's contention concerning the theft of the car;

"If that is true, its effect upon the integrity of the Government's proof is substantial."

We trust that the converse is also true.

IV.

THE AFFIDAVIT OF STEPHANIE CORDERO

Eleanor Cordero's daughter, Stephanie has submitted an affidavit alleging that on October 1, 1965, the date of the Cordero's arrest, F.B.I. agents informed her that her mother was a bank robber, and also told her certain details concerning her mother's participation.

It is quite apparent from the fact of the arrest alone, if nothing else, that the F.B.I., at the time of the arrest, was indeed under the impression that Mrs. Cordero was a bank robber. Nevertheless, it is difficult to credit the recollection of a girl who is now only fourteen years old when she purports to

- 6 -

relate details of a conversation occurring when she was only five years old.

In any event, when viewed in the context of the case as a whole, the impact of such an allegation diminishes greatly. Furthermore it is inconceivable that agents from the Danbury, Connecticut office of the F.B.I., who were not personally familiar with the facts of the case, but were merely executing the New York warrants, would so brutally traumatize a five year old child, and, in the course of so doing, voluntarily disclose in advance of any request to do so, details of a prosecution theory concerning this, or any other case.

V.

MRS. CORDERO'S DENIALS

In her affidavit of January 15, 1975, Mrs. Cordero states "at no time however did I ever deny my participation in the robberies to any agent of the Federal Government." The attached affidavit of the prosecutor, Mr. Gillen, coupled with Agent Putzs' report concerning the denials (Govt. Ex. #3) make it clear that she had indeed denied such participation.

Moreover, Mr. Maurice Igelbaum, in his brief on appeal at page 27 states:

"In connection with the Oceanside robbery, he [Cordero] identified a report given by him to the F.B.I. in February, 1966, in which he is reported to have stated that despite denials from his wife Eleanor, she was indeed involved in that robbery. (Emphasis added).

Thus, it can be fairly assumed that Mrs. Cordero did indeed deny that she was involved in the robberies.

CONCLUSION

The motion should be denied in all respects. In spite of a massive effort, the defendant has failed to make

- 7 -

any factually supported allegations concerning prosecutorial misconduct sufficient to elevate this case to the level of Cicilia, supra (see Memorandum of Law). Therefore, the notion is one in which the two year limitation of Rule 33 of the Federal Rules of Criminal Procedure Applies.

While the information supplied in the defendant's affidavit and memorandum of law is presented as if it was a major revelation, an analysis of the prior proceedings reveal that most, if not all of the matters dealt with were considered and rejected by the trial jury and by various appellate Courts, (e.g., the Massineo dismissal, return of the money to Mrs. Cordero, allegations concerning Mrs. Cordero's involvement in the robberies, etc.)

The fact that the issues involved here, represent a reheated version of that which was already litigated is most apparent. Mr. Feitel's memorandum is, at least in part, a word for word copy of Mr. Edlebaums' appellate's brief. (Compare Franzese brief, page 18, with double asterisked footnote in Mr. Feitel's memo at page 7; Franzese brief, page 18, Feitel memo page 8, etc.)

Significantly, Mr. Feitel does not borrow the following passage from Mr. Edlebaum's brief:

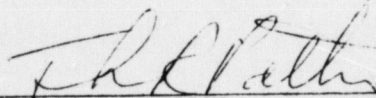
"Under further cross-examination, Cordero admitted that on the occasion of the Occanside robbery, "my wife drove the car." (Franzese brief, p.27).

Quite obviously, the above passage, insofar as it indicates that Mrs. Cordero's role was explored during the trial and a matter of record which the jury considered,

- 8 -

does not quite fit in with the present characterization of the motion as involving significant newly discovered evidence being brought forth for the first time.

WHEREFORE, it is respectfully submitted that defendant's motion be denied.



THOMAS R. PATTISON
Assistant U. S. Attorney

Sworn to before me this
day of March 1975.

RJD:TRP:rap
F.#742,235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

AFFIDAVIT

- against -

74 C 1575

JOHN "SONNY" FRANZESE,

Defendant.

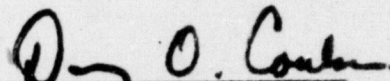
----- X

EASTERN DISTRICT OF NEW YORK, SS:

DANNY O. COULSON, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law.

On October 1, 1971, Eleanor Cordero was interviewed by myself and Special Agent T. Barry Goas, concerning events which occurred on September 29, 1971. Following that interview, on October 4, 1971 an FD-302 summarizing this interview was prepared by Agent Goas and myself.

I have read and examined this FD-302, a copy of which is attached to this affidavit, and it is totally true and accurate insofar as it relates that which Eleanor Cordero told Agent Goas and myself on October 1, 1971.


DANNY O. COULSON
Special Agent, F.B.I.

Sworn to before me this
day of March, 1975

A-79

FEDERAL BUREAU OF INVESTIGATION

Date 10/4/71

ELENOR CORDERO, 215-18 Hillside Avenue, Queens Village, New York, telephone 465-7503, was interviewed at her residence and furnished the following information:

ELENOR CORDERO is the wife of JOHN JOSEPH CORDERO who has served a term in Federal prison for bank robbery. JOHN JOSEPH CORDERO testified in Federal Court against JOHN (SONNY) FRANZESE on bank robbery charges. Both FRANZESE and CORDERO were involved in a series of bank robberies in 1965. CORDERO, as a government witness, received a reduced sentence and FRANZESE was sentenced to 50 years, for his part in the robberies.

On Memorial Day, 1971, ELENOR CORDERO was assaulted by JOHN CORDERO at their home with a hatchet. ELENOR CORDERO required over 1,000 stitches and extensive hospital care. JOHN CORDERO was subsequently committed to Creedmore State Mental Hospital, Queens, New York, and escaped from this institution approximately three weeks ago. ELENOR CORDERO has been under 24 hour police protection since that time.

ELENOR CORDERO has lived under the name ELENOR REA for several years and is employed under the name RUSTY, at the Linwood Bar and Grill, Myrtle Avenue and 64th Street, Glendale, Queens, New York, telephone 382-9720.

At approximately 3:00 PM, on September 29, 1971, two men came to ELENOR CORDERO's residence and inquired of her 11 year old daughter, STEPHANY, where JOHN CORDERO could be located. STEPHANY replied that he was not here. One of the men then asked where ELENOR CORDERO could be located. STEPHANY replied that her mother was working and would return at about 7:30 PM. These men then left saying they would call later.

At approximately 7:00 PM, ELENOR CORDERO received a telephone call from an individual who identified himself as NICK CONTI (Phonetic). CONTI told ELENOR CORDERO that he wanted to talk to her about getting SONNY FRANZESE out of jail and asked to meet her. ELENOR asked who he was and she was told that he (CONTI) was an investigator for the law firm of Sonenshine and Evoroff (Phonetic). CONTI asked if he could meet her and she suggested they meet at the Merry Go Round Bar on Queens Boulevard at 46th Street. She asked what

On 10/1/71 at Queens, New York File # NY 91-4406 - 111
by SAs DANNY O. COULSON and T. BARRY GOAS
DOC / pmh Date dictated 10/4/71

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NY 91-4406

CONTI would be wearing and agreed to meet him at 9:30 PM, on that evening. ELENOR then telephoned Sergeant PETER BOLOVINITZ of the 105th Squad, New York City Police Department (NYCPD), and told him of the conversation. BOLOVINITZ told ELENOR that officers of the NYCPD would be at the Merry Go Round Bar to observe the meeting. ELENOR then went to the Merry Go Round Bar and was observed by Detective NICK PARARELLA of the NYCPD.

At the bar, ELENOR met an individual who identified himself as NICK CONTI (Phonetic), Investigator for the law firm of Sonenshine and Everoff. CONTI told ELENOR that firm was trying to get SONNY FRANZESE out of jail.

CONTI was accompanied by an individual who would identify himself only as CARMINE (Phonetic). CARMINE told ELENOR that "we want to get SONNY out on the street. We will do anything to get him on the street."

CONTI asked ELENOR if she knew that JOHN CORDERO had lied in Federal Court in his testimony against SONNY FRANZESE, and that JOHN had framed SONNY.

ELENOR replied that she did not know if JOHN had lied.

CONTI asked ELENOR if JOHN ever talked to her about the robberies and ELENOR replied that he had not.

CONTI said to ELENOR, "We want you to go to court and say that your husband lied in court to frame SONNY FRANZESE. We will make it worth your while. We will pay all your expenses, any expenses you think are necessary. Does \$50,000 sound like a lot of money to you?"

CARMINE stated, "I want SONNY out no matter what."

ELENOR stated that \$50,000 was not a lot of money to her and she would not testify in court.

CARMINE asked ELENOR if she held a grudge against SONNY because he (SONNY) killed her first husband. He (CARMINE) then stated that SONNY had been found innocent in court of the murder and that she should have no hard feelings against SONNY.

NY 91-4406

SONNY FRANZESE was found innocent in New York State Court of the murder of ERNIE (HAWK) RUPOLO, ELENOR's first husband and the father of her daughter, STEPHANY.

CARMINE then asked ELENOR if she was afraid of them. He stated that if they wanted to cause her trouble, they could have taken or harmed STEPHANY when there were at ELENOR's house that afternoon.

ELENOR understood this to be a threat against the safety of her daughter if she did not cooperate.

CONTI then asked ELENOR if she would help them locate JIMMY SMITH and RICHIE PARKS. They both gave testimony against SONNY FRANZESE at his trial for bank robbery. CONTI said they would pay her for locating them. ELENOR said she would ask some of her friends about SMITH and PARKS. CONTI told ELENOR to call him at UL 5-1111, the office of Sonenshine, at 1:00 PM, the following Friday if she had any information for him.

ELENOR CORDERO gave the following description of the two men she met at the Merry Go Round Bar:

Number 1 (NICK CONTI)

Sex	Male
Race	White
Height	5 feet 9 inches
Weight	155 pounds
Build	Medium
Hair	Black - Bald on top
Eyes	Brown
Complexion	Olive
Age	35
Dress	Brown suit, yellow shirt, brown striped tie
Residence	Manhattan, New York

Number 2 (CARMINE)

Sex	Male
Race	White
Height	5 feet 7 inches

NY 91-4066

Weight	165 pounds
Build	Heavy - well-built
Hair	Brown - thick - curly
Eyes	Brown
Complexion	Olive
Age	Approximately 27
Dress	Black and white sports jacket, black pants
Characteristics	Spoke with "Brooklyn accent"

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

-----, being duly sworn, says that on the -----
day of -----, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a -----
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

Sworn to before me this
day of -----

AFFIDAVIT OF PERSONAL SERVICES

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

-----, being duly sworn, says that he is employed in
the office of the United States Attorney for the Eastern District of New York. That on
the ----- day of -----, he served a true copy of the annexed
----- on the office of -----
attorney for ----- herein, located at -----
-----, Borough of -----, City of New York, by
leaving a true copy of same with his clerk or other person in charge of said office.

Sworn to before me this
day -----

A-84

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the _____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,

Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the _____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York,

_____, 19____

United States Attorney,

Attorney for _____

To: _____

Attorney for _____

Civil _____ Action No. 74 C 1575

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

JOHN "SONNY" FRANZESE,

Defendant.

A F F I D A V I T

DAVID G. TRAGER

United States Attorney,

Attorney for _____

Office and P. O. Address,

U. S. Courthouse

225 Cadman Plaza East

Brooklyn, New York 11201

Due service of a copy of the within _____

_____ is hereby admitted.

Dated: _____, 19____

Attorney for _____

THOMAS R. PATTISON
Assistant Chief, Criminal Division
596-3416

A-85

APD:mvl

1

Predication

This investigation was initiated upon receipt of a telephone call from Mr. HERBERT A. LEE, Executive Vice President, United Savings and Loan Association, Oceanside, New York to SA FRANCIS J. SANDIN at 10:15 AM on August 13, 1965, advising that the bank had been held up by three white men who escaped in a 1965 dark colored Buick driven by a woman.

Narrative

About 9:55 AM on August 13, 1965, three armed white men entered the United Savings and Loan Association, 2951 Long Beach Road, Oceanside, New York. The first man covered HERBERT A. LEE, Vice President, and two female employees in the officers platform area. The second subject went to the last teller's position occupied by JOHN T. BARCLAY. This subject appeared to be the leader. A third man walked behind the tellers' cages pushing a woman customer in front of him. This third man emptied BARCLAY's cash drawer of the bills contained therein including the marked money. After emptying the cash drawer, the third man went to the safe and removed some blank First National City Bank of New York Travelers Checks which were in a metal box. He also removed a red manilla, envelope size, expanding folio containing trust records and guardian letters. All items were placed in a shopping bag by the third subject. All three left the bank together and escaped in a 1965 dark green Buick Electra sedan. This vehicle had been stolen between 11:30 PM on August 2, 1965 and 9:30 AM on August 3, 1965, while parked at the Kew Motor Inn, Queens, New York. The driver of this getaway car was a blonde female. The car was recovered in Oceanside, New York, with the motor running. Attached to the car was a license plate stolen between 6:00 PM, August 10, 1965 and noon, August 12, 1965 from a car parked in Rockville Centre, New York. Residents of area where getaway car recovered saw two cars near the location. One

FEDERAL BUREAU OF INVESTIGATION

Date 8/19/65

At 12:27 PM, on August 13, 1965, while conducting a search of the area in the vicinity of the bank, Special Agents JOSEPH TANGEL and JOHN J. STARNO located a 1965 dark green, four door, Buick Electra automobile, bearing New York license plate ER 4208, 1965 tab #2247387, and also bearing 1965 Commonwealth of Pennsylvania, Department of Revenue inspection sticker affixed to the left front of the windshield, bearing #705434.

The above automobile, with motor running, was located on the north side of Fairview Avenue, Oceanside, New York, at an open lot between 85 and 117 Fairview Avenue.

On 8/13/65 at Oceanside, New York File # NY 91-4461
by SAS JOSEPH TANGEL and
JOHN J. STARNO:mvl Date dictated 8/17/65

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FEDERAL BUREAU OF INVESTIGATION

8/25/65

Date _____

Lieutenant Gerald D. Hibbard, Identification Bureau, Nassau County Police Department advised that men of his Bureau had examined the 1965 green four door Buick Electra, Vehicle Identification Number 484395H275380. This vehicle had 1964 New York license 2R4208 and 1965 New York State tag 2247387 attached to it. Pennsylvania license L82-721 for 1965 was found under the front seat. An automobile handbook bearing the name and address of Jacob Boyer, 232 Stevens Place, Hanover, Pennsylvania was found in the glove compartment. The mileage on the odometer read 2288 and the trip mileage read 53.2. He stated that a partial latent fingerprint was obtained from a mirror attached to the sun visor.

On 8/13/65 at Garden City, N.Y. File # NY 91-4461
by SA ARTHUR D. KEEFE, JR. Date dictated 8/19/65
- 36 -

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

NY 91-4461

ADT:mpm

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AT JAMAICA, QUEENS, NEW YORK

The following investigation was conducted by SAS ARTHUR D. THATCHER, JR. and JOHN J. KILCOMMONS.

On August 13, 1965, MARTIN KOLENS, Assistant Manager, Kew Motor Inn, Union Turnpike and Grand Central Parkway, Jamaica, New York, advised that JACOB BOYER, of Hanover, Pennsylvania, was registered at the Kew Motor Inn when he reported the theft of his 1965 dark green Buick Electra, four-door sedan, sometime between late evening, August 2, 1965 and early morning, August 3, 1965. KOLENS was not acquainted with other details of the theft, and suggested contacting ALFRED MESSINA, Manager, on August 14, 1965.

On August 13, 1965, ROBERT KEMERSON, owner of restaurant and bar concession, Kew Motor Inn, advised that he had tended bar on the night of August 2, to August 3, 1965, until 4:00 A.M., closing time. KEMERSON was unable to recall any bar patrons that evening who were similar in description to unknown subjects in this case.

On August 13, 1965, GERARD FIGGIANI, bartender, Jon Doe Room, Kew Motor Inn, advised that he was unable to recall any recent bar patrons who were similar in description to unknown subjects in this case, but stated that he would be alert for their presence and immediately notify the FBI in the event he obtains any pertinent information.

On August 14, 1965, ALFRED MESSINA, Manager, Kew Motor Inn, advised that to his knowledge, JACOB BOYER's automobile was parked in the extreme right parking space in front of the motel, when it was stolen sometime during the night of August 2, to August 3, 1965. The theft was reported to the 107th Precinct, New York City Police Department, on August 3, 1965, by BOYER.

MESSINA recalled that BOYER said that he and his wife also had clothing and a camera in the vehicle when it was stolen.

RJD:TRF:mt
F.1742,235

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

AFFIDAVIT

- against -

74 C 1575

JOHN "SONNY" FRANZESE,

Defendant.

----- X

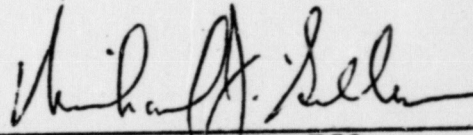
EASTERN DISTRICT OF NEW YORK, SS:

MICHAEL J. GILLEN, being duly sworn, deposes and says that he is an Attorney at Law and was formerly an Assistant United States Attorney for the Eastern District of New York and that he was the Assistant in charge of the case of United States of America v. John "Sonny" Franzese, et al.

I have been shown a copy of a report dated March 3, 1966 prepared by Special Agent Edward J. Putz. That report indicates that I advised Special Agent Putz that Eleanor Cordero had denied that she was involved in any bank robberies. While I have no independent recollection of when, where or under what circumstances this denial was made to me, a reconstruction of the events indicates that it must have occurred sometime between October 1, 1965, the date of her arrest, and February 7, 1966, the date of my communication with Special Agent Putz. During this time period I spoke with Mrs. Cordero on several occasions and her denial to me is perfectly consistent with my prior and subsequent actions during the course of this prosecution. I respectfully point out to the Court that over nine years have elapsed since these contacts with Mrs. Cordero as a result I am unable to be more specific, however, I have

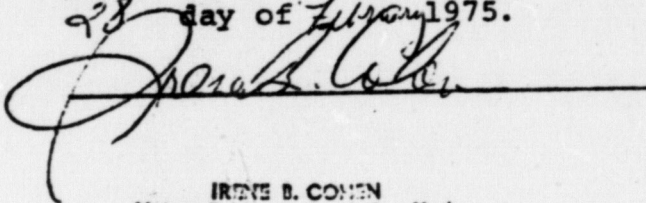
- 2 -

no reason to believe that my communication to Special Agent
Putz was inaccurate in any way.



MICHAEL J. GILLEN, ESQ.
Attorney at Law

Sworn to before me this
28 day of *August* 1975.



IRENE B. CONEN
Notary Public, State of New York
No. 24-0500065
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

NY 91-4406

Assistant United States Attorney GILLEN did not produce JOHN CORDERO as a Government witness during the trial of ANTHONY and SALVATORE POLISI due to the amount of conflict which appeared in the earlier statements made by CORDERO.

According to Assistant United States Attorney GILLEN, the conflict which appears in these statements arose out of CORDERO's hesitance to furnish information regarding the association of this bank robbery gang with JOHN "Sonny" FRANZESE who, according to CORDERO's latest statements, is deeply involved in masterminding a number of bank robberies. Assistant United States Attorney GILLEN stated that at the time the Obstruction of Justice complaint had been received from Mrs. CORDERO, both Mr. and Mrs. CORDERO denied that Mrs. CORDERO was involved in any bank robbery violation. Recently, however, JOHN CORDERO advised that Mrs. CORDERO drove one of the three switch cars in the robbery of the United Savings and Loan Association, Oceanside, New York, August 13, 1965.

Assistant United States Attorney GILLEN advised that the shadow of doubt cast by the earlier conflicting statements of CORDERO and his wife made the Obstruction of Justice violation unworthy of being further pursued or prosecuted.

Law Office
Lyon and Erbbaum

HERBERT A. LYON
 WILLIAM M. ERBBAUM

12-60 B3RD AVENUE, Kew Gardens, N.Y. 11415
 (212) 263-3235

March 10, 1975

Hon. Jacob Mishler
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, New York 11201

Re: United States v. John Franzese

Dear Judge Mishler:

Unfortunately, I was engaged before Judge Morrison at the time when the final papers were submitted to your Honor and when our office received the response from Mr. Pattison, the assistant United States attorney on the case. When I read Mr. Pattison's papers I determined that there were two points therein contained to which I thought your Honor should have a response from Mrs. Cordero, in order to have the issues before you fully clarified. Therefore, I am forwarding Mrs. Cordero's two-page affidavit.

I have also been confronted with another problem in that another witness came to my office and said that she has information on this matter. She gave me the information, which I believe to be pertinent, but refused to put it in writing and said that she would only disclose it to your Honor in order to insure that it would not hit the press or get back to those whom she fears. I should like an opportunity to personally relate to your Honor the subject matter of this proposed testimony.

I would also hope that your Honor will afford us an opportunity for a full hearing on our application.

Very truly yours,

Herbert A. Lyon

HAL:ed
 Enc.

cc: Thomas P. Pattison, Esq.
 Assistant United States Attorney

STATE OF NEW YORK)
) ss. :
COUNTY OF QUEENS)

ELEANOR CORDERO, being first duly sworn, deposes
and says:

I have read the answering papers of the United States Government that were submitted in opposition to the motion of John "Sonny" Franzese for a new trial. I make and submit this affidavit in order to clarify some of the misstatements which are contained in the Government's papers.

In the August 13, 1965 robbery, there were three automobiles involved. The automobile described in the Government's reply (the Buick Electra, stolen from the Kew Motor Inn) was used as the actual getaway car from the bank. I drove that automobile. After leaving the bank in the above-described automobile, I dropped Parks and Smitty off and then proceeded to my car, which I had left parked with my daughter, Stephanie, inside. The automobile that Parks and Smitty used as their "switch car" was the car stolen from the Tavern On the Green. The Government is quite correct that the car stolen at the Kew Motor Inn had stolen plates on it. I know this for a fact, since it was I who drove Richie Parks to a parking lot in Rockville Center, Long Island, where he stole the license plates. The parking lot was across the street from a garden apartment. It had high hedges and I can find and locate the parking lot and would be willing to show it to anyone who wishes to take

me there. The parking lot is located across the street from 402 Merrick Road, Rockville Center, Long Island, and the reason I know that particular parking lot was because there was a man who lived in that house who was a friend of my late husband, Ernie Rupolo.

As I stated in my original affidavit to this Court, I have been hesitant to come forward with the truth concerning this case out of fear for my life, from the threat of my husband, John Cordero. In 1971, when I was asked to come forward by representatives of Mr. Jack Eiseveroff, I was still in fear of my husband and it was for that reason that I remained hesitant to tell the truth. For that matter, the Government must be aware of the fact that it was during that period in 1971 that I was given 24-hour a day police protection, because of my fear of being injured by my husband.

Sworn to before me this
10th day of March, 1975.

Chad Winder

Eleanor Cordero
ELEANOR CORDERO

Received A-94
3/13/75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

74 C 1575
(66 CR 161)

-against-

JOHN FRANZESE, also known as
"Sonny", WILLIAM DAVID CRABBE,
also known as "Red", NICHOLAS
POTERE and JOSEPH M. FLORIO,
also known as Whitey",

Memorandum of Decision
and Order

Defendants.

March 12, 1975

The defendants, John Franzese and Nicholas Potere, move to vacate the judgment and commitment dated April 17, 1967, on the ground that the convictions were obtained on false and perjurious testimony, in violation of their right to due process. 28 U.S.C. §2255.

The Government's case rested on the testimony of John Cordero, Richard Parks, James Smith and Charles Zaher, accomplices in a number of armed bank robberies, and co-conspirators in a conspiracy to commit armed bank robbery. 18 U.S.C. §§371 and 2113(c) and (d). These applications are based on an affidavit of Eleanor Cordero, in which she asserts that the testimony of Cordero, Parks and Smith was false and perjurious and known by the government to be false and perjurious in several respects.

Mrs. Cordero's affidavit states:

(1) that neither Cordero, Smith or Parks were in New York City from the period July 10, 1965 to July 22, 1965. She submits a post card from Smith indicating that he and Parks were in Puerto Rico, the card being postmarked San Juan, July 19. She further states that she and Mr. Cordero were out of town together during that period;

(2) prior to the armed bank robbery of the Kew Gardens Branch of the United Savings & Loan Association, which occurred on July 30, 1965, she (not Potere) cased the bank and she (not Anne Messineo) drove the get-away car;

(3) the get-away car that was used in the August 13, 1965 robbery of the United Savings & Loan Association in Oceanside, was stolen from a parking lot of the Tavern On The Green in Central Park, and not from the area of the Kew Motor Inn; and

(3) that travelers checks stolen from the United Savings & Loan Association in Oceanside were disposed of at a bar known as Wilsker's by leaving them at the premises for the purpose of diverting suspicion from frequenters of the Kew Motor Inn. Cordero and Parks testified that Franzese ordered them to meet a fence at a bar in Yonkers

for the purpose of disposing of the stolen traveler checks.

The Government submits an interview report by Special Agent Danny Coulson dated October 4, 1971, recounting an interview with Eleanor Cordero in the presence of Special Agent T. Barry Goas. The report states that on Memorial Day, 1971, Mrs. Cordero was assaulted by Mr. Cordero with a hatchet; she was severely beaten and required extensive hospital care. One thousand sutures were required to repair the injuries. On September 29, 1971, an individual called Mrs. Cordero and represented that his name was "Nick Conti", an investigator^{/1} for a law firm representing the defendant Franzese. Mrs. Cordero was concerned about her safety and that of her daughter and notified the police. A detective from the New York City Police Department observed the meeting between Mrs. Cordero and Conti at the Merry Go Round Bar. At that

^{/1} He arranged to meet Mrs. Cordero at the Merry Go Round Bar on Queens Boulevard at 46th Street in Queens. At the bar, Conti was accompanied by a person identified as Carmine, who told Mrs. Cordero, "we want to get Sonny out on the street. We will do anything to get him on the street." Conti asked Mrs. Cordero whether she knew that Mr. Cordero had given false testimony in the Franzese trial. She replied that she did not know. Conti asked Mrs. Cordero whether Mr. Cordero discussed the bank robberies with her. She told Conti he had not. Conti told Mrs. Cordero, "we want you to go to court and say that your husband lied in court to frame Sonny Franzese. We will make it worth your while. We will pay all your expenses, any expenses you think are necessary. Does \$50,000 sound like a lot of money to you?"

meeting, she told Conti that she was not aware that her husband testified falsely and that he did not discuss the bank robberies with her.

The report of the New York City Police Department indicates that Jacob Boyer of Hanover, Pennsylvania, the owner of the get-away car, reported that his car was stolen from the parking space in front of the Kew Motor Inn sometime between the night of August 2, 1965, and the morning of August 3, 1965. This is consistent with the testimony given by Mr. Cordero.

THE PRESENCE OF CORDERO, SMITH AND PARKS AT THE MEETING
ALLEGED TO HAVE TAKEN PLACE BETWEEN JULY 19, 1965, AND
JULY 22, 1965.

Cordero testified that he, Smith, Parks, Zaher and Salvatore Polisi were at the Aqueduct Motor Inn on or about, and between July 19, 1965 and July 22, 1965 (Tr. p. 1781, 1787); they met at a bar of the Aqueduct Motor Inn. Cordero entered a room in which Franzese, Matera, Crabbe and Florio were present (Tr. p. 1783). It was at this meeting that Franzese announced that he would handle the planning and supervising of bank robberies instead of Polisi. (Tr. p. 1783-1784).

The presence of Smith and Parks in Puerto Rico on

July 19, 1965 is not inconsistent with the testimony of Mr. Cordero as to the approximate time of that meeting, nor is Mrs. Cordero's allegation in the affidavit, if true, inconsistent with the testimony given by Mr. Cordero.

TESTIMONY CONCERNING THE ROLE OF ANNE MESSINEO AS THE
DRIVER OF THE GET-AWAY CAR

The record is replete with testimony concerning Mrs. Cordero's participation in the bank robberies. Though Mr. Cordero denied that his wife was involved in the robberies, he testified that his wife and daughter were in the switch car and that his wife drove him away from the area of the bank after the robbery of the United Savings & Loan Association on August 13, 1965. (Tr. p. 1866-1888). He acknowledged that he told the F.B.I. that despite his wife's denial, she was involved in that robbery (Tr. p. 1996). He also said that in the statement made to the F.B.I., he told them that he was not sure as to whether Anne Messineo or Smith's girlfriend drove the get-away car. He readily admitted that his wife accompanied him and the other bank robbers on their mission, though he denied that his wife was aware of the purpose of the trip to the bank. Mrs. Cordero accompanied Mr. Cordero, Parks and Smith to Denver, Colorado and then

to Utah, where a bank was robbed on September 13, 1965. (Tr. p. 1905-1908). Cordero, Parks and Smith robbed the bank. Cordero testified, " . . . the three of us jumped in the car. We drove back to the switch car." (Tr. p. 1909). Despite Cordero's attempts at times to exculpate his wife or minimize her role, the jury was advised that his wife did have a role in one or more of the armed bank robberies.

A fair reading of the record shows that the Government revealed everything it knew concerning Mrs. Cordero's participation in the robberies.¹² Mr. Edelbaum, Franzese's lawyer, made much of Mrs. Cordero's participation in the bank robberies. He said, "Mr. Cordero had turned his wife in, his own wife. He had made a statement. It is right in the record. He had made a statement that said despite her denials she was involved in the August 18th [sic] robbery. She was involved." (Tr. p. 3954-3955).

¹² In a proceeding, Cordero v. United States, 66 C 1099, for the return of currency seized by the government, Assistant United States Attorney Gillen asserted "portions of the aforesaid currency are directly attributable to the proceeds of the bank robbery (Affidavit referred to at Tr. p. 2072)."

ATTEMPTED DISPOSITION OF THE STOLEN TRAVELER'S CHECKS

The Government was in possession of the stolen traveler's checks and offered them into evidence (Tr. p. 731-732). Opposition to the offer was sustained and the testimony as to where the stolen traveler's checks were found was lost. The place where they were found is of little significance. The testimony was offered by the Government to show the role that Franzese played in the conspiracy. Mrs. Cordero's version of the reason for abandoning the traveler's checks at a distance from the Kew Motor Inn has a grain of logic; however, the elaborate scheme for carrying out the purpose is incredible.

DISCUSSION

Motions for a new trial are not favored. United States v. Zannino, 468 F.2d 1299 (1st Cir. 1972); United States v. Catalano, 491 F.2d 268 (2d Cir. 1974); United States v. Mayersohn, 452 F.2d 521 (2d Cir. 1971). They are directed at the trial court's discretion. "Under its broad power the court may weigh the evidence and consider the credibility of the witnesses." United States v. Zannino, supra at 103. The burden of showing the right to a new

trial is on the moving party, United States v. Lombardozzi, 236 F. Supp. 957 (E.D.N.Y. 1964), affirmed 343 F.2d 127 (2d Cir. 1965), cert. denied, 381 U.S. 938, 85 S. Ct. 771 (1965). Where the newly discovered evidence is merely offered to impeach the credibility of a witness, it will ordinarily not be sufficient to warrant a new trial. United States v. Costello, 255 F.2d 876 (2d Cir. 1958), cert. denied, 357 U.S. 937, 78 S.Ct. 1385 (1958).^{/3} See Napue v. State of Illinois, 360 U.S. 264, 79 S.Ct. 1173, 1177 (1959), Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766 (1972). It is noted that the testimony of Charles Zaher concerning the meeting alleged to have taken place on or about and between July 19, 1965 and July 23, 1965, at the Aqueduct Motor Inn is not under attack.^{/4}

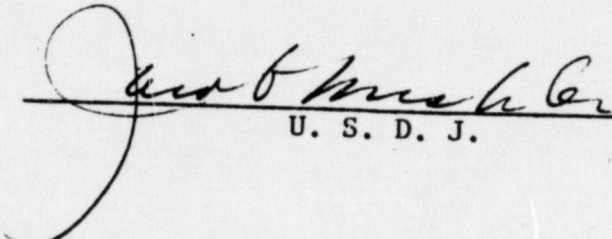
In a motion for a new trial the court is required to evaluate the strength of the testimony to determine

^{/3}United States v. Polisi, 416 F.2d 573 (2d Cir. 1969) is not to the contrary. There, the prosecutor's failure to disclose evidence required a new trial. 416 F.2d at 577.

^{/4}Zaher's testimony concerning the meeting duplicates that given by Cordero which is now being attacked by Mrs. Cordero. Zaher placed Franzese, Matera, Crabbe, Florio and Cordero at the meeting; he stated also that Parks and Smith were with him in the bar at the Aqueduct before he went upstairs to meet with the others. (Tr. p. 1456-1461).

whether such testimony would properly produce a different result in the event of retrial. United States v. Pucco, 338 F. Supp. 1252 (S.D.N.Y. 1972), aff'd 461 F.2d 846 (2^d Cir. 1972) and 493 F.2d 1399 (2d Cir. 1974). In making this determination the court reviewed the extensive and intensive cross examination by the defendants' counsel of Government witnesses exploring all the motives for testifying and introducing impeaching evidence in attacking their credibility. The court is satisfied that the testimony of Mrs. Cordero, as outlined in her affidavit, would have little, if any, effect on the credibility of Mr. Cordero and the other Government witnesses. Her testimony would not produce a different verdict in the event of retrial. The motion to vacate the judgment of conviction pursuant to 28 U.S.C. § 2255 is in all respects denied and it is

SO ORDERED.


U. S. D. J.

A-104

(Closed)

UNITED STATES OF AMERICA

-against-

JOHN FRATZESE, also known as
"Sonny", WILLIAM DAVID CHABER,
also known as "Red", NICHOLAS
POTER and JOSEPH M. FLAPIO,
also known as "Whitey",

Defendants.

JUDGMENT

74 C 1575

FILED

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

MAR 12 1975

A memorandum of decision and order
of the honorable Jacob M. Weiler, United States District Judge,
having been filed on March 12, 1975, denying in all respects
the motion to vacate the judgment of conviction, it is

ORDERED and ADJUDGED that the
defendant petitioners take nothing and the motion to vacate the
judgment is denied.

Dated: Brooklyn, New York
March 14, 1975

Louis Angel
Clerk

By: Thomas Blum
Chief Deputy Clerk